

# **Waterway and Wetland Handbook**

## **APPENDICES**

### **GUIDANCE PURPOSE AND DISCLAIMER**

This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule apply. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance cannot be relied upon and does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decision made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes, common law and administrative rules to the relevant facts.

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### **Appendix 1**

#### **TOPICAL LIST OF WATER LAW CASES (2000)**

The topical list of water law cases is intended to be a research tool for enforcement personnel and technical staff working on water regulation matters. The cases listed under each topic represent important concepts or current rules of law to be considered when explaining the water regulation program or in enforcement situations.

It is not a definitive compendium of cases or principles. For example, the list of navigability does not include cases on navigability as it relates to mill dams or on navigability determinations for individual lakes or streams.

The topical list includes decisions by the Wisconsin Supreme Court and courts of appeals.

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#### **TOPICS FOR LISTING OF WATER LAW CASES**

Accretion & Reliction  
Aesthetics/Scenic Beauty  
Bed Ownership  
Boathouses  
Bridges  
Bulkhead Lines  
Channel Changes  
Cranberry Bogs  
Cumulative and Secondary impacts  
Dams (see also Mill dams)  
Diversions  
Drainage  
Dredging  
Enlargements  
Fences  
Floating Bogs  
Floodplain Zoning  
Incidents of Navigation  
Lakes  
Levels and Flowages  
Mill Dams  
Navigability  
Nuisance  
Obstructions  
Ordinary Highwater Mark  
Piers  
Public Rights  
Riparian Rights  
Structures and Fills  
Surface Waters  
Takings  
Trust Doctrine  
Watercourse

## **ACCRETION AND RELICTION**

Doemel v. Jantz, 180 Wis. 225 (1923)

The rights of riparian owners must be condemned. Such riparian rights include the right to build piers and walls to prevent erosion as well as the right to accretions and relictions; trust doctrine; public rights to high and low water line; the public cannot trespass on land between high and low water line when the water level is down.

Jansky v. Two Rivers, 227 Wis. 228 (1938)

Rights of riparian owner on Lake Michigan where there had been accretion and reliction.

Rondesvedt v. Running, 19 Wis.2d 614 (1963)

Alluvion formed by accretion belongs to owner of the upland to which it is contiguous, but the riparian right to access to water and circumstances change this rule so that land in front of land goes to owner so access can be maintained.

De Simone v. Kramer, 77 Wis.2d 188 (1977)

Riparian owner obtains right and title to soil formed by accretions and relictions exclusive as to all the world, except where rights conflict with rights of public for navigation purposes. Accretion is the increase in land caused by the gradual deposit by water of materials on the shores, which deposit replaces the water at this location with dry land.

The prevailing doctrine that the causing or hastening of gradual deposits by artificial constructions, made by persons other than the benefited and claiming owner, does not prevent the doctrine of accretion from applying. When new formations of land are created by actions of the riparian owner, then the accretion doctrine does not apply.

W.H. Pugh Coal Co. v. State, 105 Wis.2d 123 (Ct.App. 1981)

The right of a riparian owner to accretions upon his land is absolute as against all the world except to the public's rights of navigation.

A riparian owner can obtain right and title to land formed by artificial accretion. However, a riparian owner is not allowed to take title to land accretion which was induced by his/her own actions.

The fact that the State holds a lake bed in public trust is not sufficient to grant it title to accretions on a riparian owner's land without just compensation.

State v. Trudeau, 139 Wis.2d 91 (1987)

The doctrines of accretion and reliction apply only to land above the OHWM. They do not apply to land which was submerged by lake waters when those waters reached the elevation of the lake's OHWM.

## **AESTHETICS/SCENIC BEAUTY**

Muench v. Public Service Commission, 261 Wis. 492 (1952)

The public right to enjoy natural scenic beauty is firmly established. Under the public trust doctrine, the Department has the duty to protect this public right.

Claflin v. DNR, 58 Wis.2d 182 (1973)

Potential damage to scenic beauty is a proper basis for the denial of a sec. 30.12, Wis. Stats., structure permit.

Village of Menomonee Falls v. DNR, 140 Wis.2d 579 (1987)

Despite their subjective nature, aesthetics and scenic beauty are proper factors to be considered in the determination of whether permits for a particular project should be granted.

The enjoyment of scenic beauty is one of the paramount interests appurtenant to navigable waters. A conclusory statement that a project will have a negative effect on aesthetics is not sufficient. Substantial evidence must support such a finding.

## **BED OWNERSHIP**

McLennan v. Prentice, 85 Wis. 427 (1893)

Question of ownership of submerged land in Ashland Bay.

Mendota Club v. Anderson, 101 Wis. 479 (1899)

Question was as to status of a certain area on the north end of Lake Mendota. The building of the Farwell Dam in 1850 raised the level of water in the lake some 4 feet giving rise to the question of whether the area was navigable water and of ownership to its bottom, as contrasted to rights claimed through a tax deed allegedly conveying the area. Discusses trust doctrine and also status of artificial condition created by dam.

State v. Bleck, 114 Wis.2d 454 (1983)

If a lake is navigable and natural, private individuals cannot gain title to the lake bed and an individual who is not a riparian owner cannot place a structure on the bed. However, the DNR does not have jurisdiction if a waterway is artificially created on private land. An artificial and private lake is an exception to the general rule that waters which are navigable in fact are navigable and public. Anyone who objects to the state's jurisdiction under §30.12 and §30.15, Stats., on the basis that the body of water over which the state is asserting jurisdiction is an artificial water created on private land has the burden of persuasion on that fact by a preponderance of the evidence.

State v. Trudeau, 139 Wis.2d 91 (1987)

The state holds title to the beds of lakes up to the OHWM. An area need not be navigable to be state-owned lake bed. If the land is part of the navigable lake, then the fact that the specific area cannot be navigated is irrelevant.

The erection of an artificial barrier between a lake and a project site does not remove the site as part of the lake. So long as lake water would naturally flow to and from the site in the absence of the barrier, the site is part of the lake.

A county board of adjustment does not have the authority to grant variances for any part of project site below the OHWM.

Klingeisen v. DNR, 163 Wis.2d 921 (1991)

If an artificial channel is navigable and public, the DNR has jurisdiction to regulate boathouses on it even though the bed is privately owned. Title to the bed of navigable channels is subordinate to the rights of the state to preserve to the people the full enjoyment of navigation and the rights incident thereto.

## **BOATHOUSES**

Claflin v. State Department of Natural Resources, 58 Wis.2d 182 (1973)

Determination that specific structure is detrimental to public interest on grounds that it impairs natural beauty of lake is proper basis for denial of a permit for the structure. The natural beauty of our northern lakes is one of the most precious heritages Wisconsin citizens enjoy. It is entirely proper that the natural beauty should be protected against specific structures that may be found to mar that beauty.

Klingeisen v. DNR, 163 Wis.2d 921 (1991)

The DNR has jurisdiction to regulate boathouses located on artificial, navigable channels when those channels are connected to natural, navigable bodies of water.

## **CHANNEL CHANGES**

Lathrop v. Racine, 119 Wis. 461 (1903)

Improvement of harbor. Status of artificial channel, straightening out natural river.

## **CRANBERRY BOGS**

Cranberry Creek D. D. v. Elm Lake C. Co., 170 Wis. 362 (1920)

Cranberry growers have right to divert natural watercourse

State v. Zawistowski, 95 Wis.2d 250 (1980)

Section 94.26, Stats., exempts cranberry growers from getting s. 30.18 permit. Use of water is limited by the common law reasonable use doctrine.

Tenpas v. DNR, 148 Wis.2d 579 (1989)

Secs. 710.11 and 31.14 do not apply to cranberry growers. Both laws conflict with the rights granted to cranberry growers under sec. 94.26. Furthermore, the legislative history of sec. 31.14 indicates that it was intended to apply only to power dams, not cranberry dams.

## **CUMULATIVE AND SECONDARY IMPACTS**

Hixon v. Public Service Commission, 32 Wis.2d 608 (1966)

In this case, the Court stressed the importance of taking the cumulative impacts of a structure/project into consideration. In holding that the Commission's denial to Hixon of a structure permit was not arbitrary or capricious, the Court stated,

"There are over 9,000 navigable lakes in Wisconsin covering an area of over 54,000 square miles. A little fill here and there may seem to be nothing to become excited about. But one fill, though comparatively inconsequential may lead to another, and another, and before long a great body of water may be eaten away until it may no longer exist." Id. 631-632.

Wis. Environmental Decade v. DNR, 115 Wis.2d 381 (1983)

In this case, the Court determined that the DNR need not consider the secondary socio-economic effects of a project in deciding whether to prepare an EIS. That is, WEPA does not require the DNR to prepare an EIS for a project when investigation and research indicate that the project will have minor impacts on the environment, but will have possible socio-economic impacts. State agencies must look for significant effects on the physical environment in deciding whether to prepare an EIS. In the absence of significant impacts on the environment, socio-economic impacts do not trigger the EIS requirement.

The public trust doctrine is not to be "expanded to cover...downtown preservation."

Sterlingworth Condominium Assoc. V DNR, 205 Wis 2d. 702(Ct. App., 1996)

This case deals with the cumulative impacts of piers, boats and other riparian impacts on the shores of navigable waters. It updates Hixon and provides excellent language on cumulative impacts:

"Whether it is one, nine or ninety boat slips, each slip allows one more boat which inevitably risks further damage to the environment and impairs the public's interest in the lakes....In our opinion, the DNR, in limiting Sterlingworth's permit...carried out its assigned duty as protector of the overall public interest in maintaining one of Wisconsin's most important natural resources."

## **DAMS**

(See also MILL DAMS)

Baraboo v. Railroad Commission, 195 Wis. 523 (1928)

Who may authorize dams. Regulation by state.

New Lisbon v. Harebo, 224 Wis. 66 (1937)

Sec. 31.06; city must acquire PSC permit to construct a dam before condemnation proceedings.

State ex rel. Priegel v. Northern States Power Co., 242 Wis. 345 (1943)

25% of natural flow must pass through a dam to protect lower riparian owners. A dam = mill race, canal, pond.

Jones v. Wisconsin Michigan Power Co., 252 Wis. 280 (1948)

Defendant's right to lower water and interpretation of dam maintenance.

Muench v. PSC, 261 Wis. 492 (1952)

Trust doctrine extends to land only as long as it remains under navigable water. "Navigable in fact". PSC considers fishing, scenic beauty, boating, hunting as public rights in authorizing dam.

The existing "County Board Law" section of a state statute was held unconstitutional because it permitted the public right to enjoyment of fishing, hunting or natural scenic beauty in a navigable stream to be seriously impaired or destroyed through action of a county board. Such delegation of power by the Legislature, involving a complete abdication of the trust, is void.

Further; (1) Public Service Commission decisions are reviewable in court. (2) Any citizen of the state, even though not a riparian owner and living considerable distance from the waters concerned, can bring action as an aggrieved and directly affected party. (3) It is the duty of the state through its Conservation Commission to appear in behalf of the public before the Public Service Commission in their judicial capacity in such cases. (4) The Public Service Commission will be required to weigh public rights for recreational enjoyment of a stream against the public benefits which would result from the construction of a dam. (5) The right of the citizens of the state to enjoy our navigable streams for recreational purposes, including the enjoyment of a scenic beauty, is a legal right that is entitled to all the protection which is given to financial rights.

Daly v. Natural Resources Board, 60 Wis.2d 208, Certiorari denied 94 S. St. 883, 414 U.S. 1137, 38 L. Ed. 2d 763 (1973)

There was substantial evidence in record to support DNR's issuance of dam permit.

Tenpas v. DNR, 148 Wis.2d 579 (1989)

Secs. 710.11 and 31.14 do not apply to cranberry growers. Both laws conflict with the rights granted to cranberry growers under sec. 94.26. The legislative history of sec. 31.14 indicates that it was intended to apply only to power dams, not cranberry dams.

## **DIVERSIONS**

Nekoosa-Edwards Paper Co. v. PSC, 8 Wis.2d 582 (1959)

PSC has no jurisdiction under sec. 31.14 to determine whether the diversion of nonsurplus water will damage riparian owners in deciding whether to grant a permit to divert waters. If the diversion will take nonsurplus water, any diversion as a matter of law will injure riparian owners, and so their consent must be obtained.

State ex rel. Chain O' Lakes P. Asso. v. Moses, 53 Wis.2d 579 (1972)

Diversion of waters.

The established rule of the common law in Wisconsin was that every riparian owner of stream or lakeshore property has an equal right to the use of its water for all reasonable and beneficial purposes. However, s. 30.18, Stats., in derogation of common law makes it unlawful for any person to divert water without a permit from the Department of Natural Resources if the use or diversion thereof falls into one of the three categories listed in the statutes.

A s. 30.18 permit only need be obtained if the intended use of the diverted waters falls within the three categories, (1) agriculture, (2) irrigation, (3) and the bringing back or maintaining of a normal water level in stream or lake.

Omernik v. State, 64 Wis.2d 6 (1974)

Unlawful diversion of water from stream and creek. Section 30.18, Stats., requires that a permit be obtained before water can be diverted for irrigation purposes whether the water is surplus or nonsurplus. The fact that a stream is navigable or nonnavigable is of no consequence since the statutory prohibition of s. 30.18, Stats., applies to diversions from nonnavigable as well as from navigable streams.

Omernick v. Department of Natural Resources, 71 Wis.2d 370 (1975)

Recognized that s. 30.18, Stats., introduces element of prior appropriation into state water law.

State v. Zawistowski, 95 Wis.2d 250 (1980)

Section 94.26, Stats., exempts cranberry growers from getting s. 30.18 permit. Use of water is limited by the common law reasonable use doctrine.

## **DRAINAGE**

Nicolai v. Wilkins, 104 Wis. 580 (1899)

Landowner can't collect and discharge water on land of neighbor.

Priewe v. Wis. S. L. & Imp. Co., 103 Wis. 537 (1899)

Held that a legislatively-authorized scheme to drain Muskego Lake purportedly under ch. 169, Laws of 1887, ch. 202, Laws of 1891, was invalid as a violation of the constitution. Discusses trust doctrine - legislature can't free itself of the trust.

McEvoy v. Gallagher, 107 Wis. 486 (1900)

Surface water. Right to drainage created by prescription.

In re Dancy Drainage District, 129 Wis. 129 (1906)

Impairment of navigable waters. Drainage district refused power to drain a lake.

In re Horicon Drainage District, 136 Wis. 227 (1908)

Impairment of navigable waters. Who has title to bed of navigable water created by artificial condition.

Merwin v. Houghton, 146 Wis. 398 (1911)

Riparian rights can be condemned for drainage - a public purpose; drainage commissioners may change channel of navigable stream if it will improve navigability; diversion of river through nearby marshlands; trust doctrine. Two justices say public right of fishing subject to paramount right to improve navigation.

Cranberry Creek D. D. v. Elm Lake C. Co., 170 Wis. 362 (1920)

Right to divert natural watercourse by cranberry growers.

Dargert v. Dietrich, 171 Wis. 584 (1920)

Collection of damage caused by failure to clean out drainage ditch.

In re Crawford County Levee and Drainage District, 182 Wis. 404 (1924)

Discusses trust doctrine, state can't destroy navigable waters.

C. B. & Q. R. R. Co. v. Railroad Commission, 199 Wis. 342 (1929)

Drainage has to be provided for, but does not have to follow natural pattern.

Delta Fish & Fur Farms v. Pierce, 203 Wis. 519 (1931)

Judgement in drainage district proceedings as establishing status of water as nonnavigable waters.

Henry v. C. B. & Q R. Co., 204 Wis. 182 (1931)

Action for damages due to flooding of crops. Allegedly due to railroad embankment and inadequate bridge.

Thurs Box Co. v. Marathon Co., 233 Wis. 387 (1940)

Sec. 88.38 (1938); highway cannot obstruct surface drainage.

In re Jefferson Co. Farm Drainage, 264 Wis. 339 (1953)

Not proper to form drainage district on piecemeal basis.

Lloyd v. Chippewa Co., 265 Wis. 293 (1953)

County not required to provide drainage to private property where easement for highway drainage has been granted.

Tiedeman v. Middleton, 25 Wis.2d 443 (1964)

City has right to channel surface water in natural direction, if no new watershed is tapped and volume of water is not increased. Prescriptive and artificial conditions discussed.

State v. Deetz, 66 Wis.2d 1 (1974)

The Court overrules the common enemy doctrine and adopts the "reasonable use" rule. Under the reasonable use rule, a landowner is liable for damages caused by his/her diversion of surface waters if that diversion unreasonably interferes with another's use or enjoyment of land.

Timm v. Portage County Drain. Dist., 145 Wis.2d 743 (Ct.App. 1988)

The operation of a drainage ditch is not an agricultural practice within the meaning of sec. 814.04(9) and sec. 823.08(4), Wis. Stats.

## **DREDGING**

Angelo v. Railroad Commission, 194 Wis. 543 (1928)

Contracts for taking material from bed of navigable lakes. Discusses title to bed, state has proprietary interest in minerals or other materials in beds of navigable lakes; dredging statute is constitutional.

Reuter v. Department of Natural Resource, 43 Wis.2d 272 (1969)

Requires the Department of Natural Resources, as a prerequisite to issuing a dredging permit under s. 30.20(2)(c), Stats., to make a specific finding of fact as to effect on water quality and increases of water pollution which the granting of a permit might engender.

As to lakes and streams of the state, the term "public interest" clearly involved the use by the public for all the incidents of navigation, i.e., sailing, rowing, canoeing, bathing, fishing, hunting, skating, and other public purposes - most, if not all of which are rendered less useful or otherwise adversely affected by polluted waters.

State v. Dwyer, 91 Wis.2d 440 (1979)



Section 30.20, Stats., applies to all streams. Section 88.90(3) does not supersede requirement to get s. 30.20 permit.

R.W. Docks & Slips v. DNR, 145 Wis.2d 854 (Ct.App. 1988)

Sec. 30.19, Stats., deals only with the dredging of artificial waterways, not natural bodies of water.

## **ENLARGEMENTS**

Pewaukee v. Savoy, 103 Wis. 217 (1899)

This was an appeal from a judgment restraining defendants from placing a fence along street line to prevent frontage to Pewaukee Lake. The natural shoreline did not reach the limit or the street, but an artificial line maintained more than 20 years brought the water level to the street limit. Case discusses trust doctrine. Holds artificial condition had legally become its natural condition by existence of new level for more than 20 years and, as regarding the submerged lands, are characteristics of a natural lake to that extent. Dedication by riparian owners conclusively presumed where it exists for 20 years. Status of streets terminating on navigable water.

Haase v. Kingston Co-op Creamery Assn, 212 Wis. 585 (1933)

Public use of navigable artificial waters can legally become a natural condition.

Klingseisen v. DNR, 163 Wis.2d 921 (1991)

If the volume or expanse of a navigable body of water is increased artificially, the public right to use the water is increased correspondingly.

The Court held that an artificial channel was navigable and public because it was an expansion of Lake Michigan's Green Bay and could not exist on its own.

## **FENCES**

Mendota Club v. Anderson, 101 Wis. 479 (1899)

Question was as to status of a certain area on the north end of Lake Mendota. The building of the Farwell Dam in 1850 raised the level of water in the lake some 4 feet, giving rise to the question of whether the area was navigable water and of ownership to its bed, as contrasted to rights claimed through a tax deed allegedly conveying the area. Discusses trust doctrine and also status of artificial condition created by dam.

Pewaukee v. Savoy, 103 Wis. 271 (1899)

This was an appeal from a judgment restraining defendants from placing a fence along street line to prevent frontage therefrom to Pewaukee Lake. The natural shoreline did not reach the limit or the street, but an artificial line maintained more than 20 years brought the water level to the street limit. Case discusses trust doctrine. Holds artificial condition had legally become its natural condition by existence of new level for more than 20 years and, as regarding the submerged lands, are characteristics of a natural lake to that extent. Dedication by riparian owners conclusively presumed where it exists for 20 years. Status of streets terminating on navigable water.

Doemel v. Jantz, 180 Wis. 225 (1923)

The rights of a riparian owner must be condemned. Such riparian rights include the right to build piers and walls to prevent erosion as well as the right to accretions and relictions; trust doctrine; public rights to high and low water line; the public cannot trespass on land between the high and low water lines when the water level is low.

## **FLOATING BOGS**

Attorney General ex rel. Becker v. Bay Boom W. R. & F. Co., 172 Wis. 363 (1920)

Extension of lake being caused by a dam. Status of waters created by artificial means and title to land beneath water. Definition of "avulsion". Rights of riparian owner and right to encroach on bed. Public right of recreation. "Floating bog" defined.

State v. Lamping, 36 Wis.2d 328 (1967)

Floating bog defined. A material factor to be considered in determining whether a peninsula such as that involved in the instant case is a floating bog on land is the degree to which it is anchored or fastened to the underlying lake bed; if it is so securely anchored or fastened thereto that its surface does not rise or fall with the raising or lowering of the lake's water level, it would no longer constitute a floating bog.

## **FLOODPLAIN/Shoreland Zoning**

Just v. Marinette County, 56 Wis.2d 7 (1972)

The exercise of police power in zoning must be reasonable. It is reasonable to exercise police power to prevent harm to public rights by limiting the use of private property to its natural uses. The shoreland zoning ordinance at issue in this case was held to not be a compensable taking because it preserved nature and natural resources as they were created and to which the public had a present right.

"The active public trust duty of the state of Wisconsin in respect to navigable waters requires the state not only to promote navigation but also to protect and preserve those waters for fishing, recreation, and scenic beauty. To further this duty, the legislature may delegate authority to local units of government, which the state did by requiring counties to pass shoreland zoning ordinances."

"Lands adjacent to or near navigable waters exist in a special relationship to the state. They ... are subject to the state public trust powers."

"The state of Wisconsin under the trust doctrine has a duty to eradicate the present pollution and to prevent further pollution in its navigable waters. This is not, in a legal sense, a gain or a securing of a benefit by the maintaining of the natural status quo of the environment." Therefore, the shoreland zoning ordinance did not create a public benefit and could not be held to result in a compensable taking.

State v. Trudeau, 139 Wis.2d 91 (1987)

Under sec. 87.30(2), Stats., the State has a cause of action to enjoin a public nuisance whenever there exists a violation of any local floodplain zoning ordinance.

M & I Marshall Bank v. Town of Somers, 141 Wis.2d 271 (1987)

Primary authority to enact, repeal and amend a zoning ordinance was intended to be, and is, vested at the county level. Therefore, the county was the proper party against whom a takings claim was to be made, not the town.

Reaffirms Just and extends it by stating that a parcel of land which consists of continuing wetland which is partly within and partly outside a shoreland area should be treated as if the entire wetland was located within the shoreland area.

State v. Ozaukee Board of Adjustment, 152 Wis.2d 552 (Ct.App. 1989)

Floodplain zoning is a necessary tool to protect human life and health and to minimize property damages and economic losses. The legislature may assign public trust duties to local units of government which the state did by requiring counties to pass shoreland ordinances.

Ozaukee Board of Adjustment acted outside its jurisdiction in granting the 4 variances for a restaurant/shopping complex within a designated floodplain area.

## **INCIDENTS OF NAVIGATION**

Olson v. Merrill, 42 Wis. 203 (1877)

A stream that is navigable at recurring times is navigable.

Ne-pee-nauk Club v. Wilson, 96 Wis. 290 (1897)

Right to hunt on Mud Lake. Who may hunt or fish thereon. Defines difference between lake and stream. The Court recognized that the body of water in question could properly be called a swamp or marsh because much of the water disappeared in the summer, leaving large expanses of mud, bog and thick vegetation. However, the Court still declared it to be a navigable lake.

Willow River Club v. Wade, 100 Wis. 86 (1898)

Stream bed title in riparian owner; right to fish is a public right. Question was as to right to take fish from Willow River; discusses ownership of bed of stream and trust doctrine. What is navigable water. Distinctions between navigable water of United States as contrasted to state. Who owns fish in water. Riparian owners can't prevent fishing in navigable waters.

Diana Shooting Club v. Husting, 156 Wis. 261 (1914)

Trust doctrine includes right to hunt. The Court defines the ordinary highwater mark as: "...the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic."

Nekoosa-Edwards Paper Co. v. Railroad Commission, 201 Wis. 40 (1930)

Order of PSC denying permit for dam in Four Mile Creek. Discusses history of water law. What is "navigable water". Rights of riparians on navigable streams.

Baker v. Voss, 217 Wis. 415 (1935)

Title to bed of both meandered and nonmeandered lakes is in state.

Munninghoff v. Wisconsin Conservation Commission, 255 Wis. 252 (1949)

Authority of commission to issue licenses for privately owned land under navigable water; trust doctrine; riparian rights; whether stream is navigable or not; trapping not an incident to navigation and so no public right to trap; right of navigation includes incidental use of bottom.

Muench v. PSC, 261 Wis. 492 (1952)

Trust doctrine extends to land only as long as it remains under navigable water. "Navigable in fact". PSC considers fishing, scenic beauty, boating, hunting as public rights in authorizing dam.

The existing "County Board Law" section of a state statute was held unconstitutional because it permitted the public right to enjoyment of fishing, hunting or natural scenic beauty in a navigable stream to be seriously impaired or destroyed through action of a county board. Such delegation of power by the Legislature, involving a complete abdication of the trust, is void.

Further; (1) Public Service Commission decisions are reviewable in court. (2) Any citizen of the state, even though not a riparian owner and living considerable distance from the waters concerned, can bring action as an aggrieved and directly affected party. (3) It is the duty of the state through its Conservation Commission to appear in behalf of the public before the Public Service Commission in their judicial capacity in such cases. (4) The Public Service Commission will be required to weigh public rights for recreational enjoyment of a stream against the public benefits which would result from the construction of a dam. (5) The right of the citizens of the state to enjoy our navigable streams for recreational purposes, including the enjoyment of scenic beauty, is a legal right that is entitled to all the protection which is given to financial rights.

## **LAKES**

Ne-pee-nauk Club v. Wilson, 96 Wis. 290 (1897)

The Court discusses the distinction between a lake and a watercourse or stream. A stream or watercourse has natural motion (i.e., a current). On the other hand, in its natural state the water of a lake is substantially at rest. This distinction between lakes and streams is entirely irrespective of the size of the body of water.

The Court recognized that the body of water in question could properly be called a swamp or marsh because much of the water disappeared in the summer, leaving large expanses of mud, bog and thick vegetation. However, the Court still declared it to be a navigable lake.

Illinois Steel Co. v. Bilot, 109 Wis. 418 (1901)

A swampy area is declared by the Court to be a navigable lake. "The mere fact that the water was very shallow, so that marsh grass appeared above the surface, that it was called a marsh, and that the water was not deep enough to admit of navigation, or that the surface was not at all times wholly submerged, does not preclude its being in fact a lake."

Baker v. Voss, 217 Wis. 415 (1935)

A lake is navigable that is a shallow, muddy lake or marsh, if boats may be used thereon.

State v. Trudeau, 139 Wis.2d 91 (1987)

An area need not be navigable to be lake bed. If land is part of a navigable lake, then the fact that the specific area cannot be navigated is irrelevant.

## **LEVELS AND FLOWS**

Smith v. Youmans, 96 Wis. 103 (1897)

Action to restrain mill dam owner at outlet of Lake Beulah from taking action which would reduce level of lake. After 20 years, an artificial condition becomes a natural condition.

Flambeau River Lbr. Co. v. Railroad Commission, 204 Wis. 524 (1931)

Validity of order of PSC authorizing Flambeau R. L. Co. to release all flow in Flambeau except 150 c.f.s. when logs were being driven on the river. Important case. Describes history of water law. Court can't substitute judgment for PSC.

Trout Brook Co. v. Willow River P. Co., 221 Wis. 616 (1936)

Duty of dam owner to operate dam so upper and lower riparians are not injured. Dam need only be constructed for normal floods.

State ex rel. Priegel v. Northern States Power Co., 242 Wis. 345 (1943)

25% of natural flow must pass through a dam to protect lower riparian owners. A dam = mill race, canal, pond.

Wisconsin Power and Light Company v. PSC, 5 Wis.2d 167 (1958)

Setting of level is not a taking and is a proper exercise of police power. Sec. 31.02 applies to dams maintained before and after enactment.

The provision of 31.34 that at least 25% of natural flow must be passed by a dam only sets a minimum, not a standard.

DNR v. Clintonville, 53 Wis.2d 1 (1971)

Violation of s. 31.02 does not establish cause of action for damages under s. 29.65.

Otte v. DNR, 142 Wis.2d 222 (Ct.App. 1987)

Under sec. 32.01(1) Stats, the DNR has the power to regulate water levels. However, this section does not authorize the DNR to order a riparian landowner to restore a filled ditch at his own expense. Such an order was a compensable taking.

## **MILL DAMS**

Newcomb v. Smith, 2 Pinney 131 (1849)

Constitutionality of Mill dam Act of 1840. The act was found to be constitutional. Also a discussion of due process and taking.

Thien v. Voegtlander, 3 Wis. 411 (1854) Pratt v. Brown, 3 Wis. 532 (1854)

Constitutionality of Mill Dam Act. A mill dam can only be constructed if compensation is paid.

Fisher v. Horicon Iron and Mfg. Co., 10 Wis. 293 (1860)

Court states that if it were not for precedent and for economical benefits, it would overrule the Mill Dam Act. Holds that the Mill Dam Act is constitutional.

McDonald v. Apple River Power Co., 164 Wis. 450 (1916)

What is "navigable river" under Mill Dam Law.

Nekoosa-Edwards Paper Co. v. Railroad Commission, 201 Wis. 40 (1930)

Order of PSC denying permit for dam in Four Mile Creek. Discusses history of water law. What is "navigable water". Rights of riparians on navigable streams.

Haase v. Kingston Co-op Creamery Assn, 212 Wis. 585 (1933)

Public use of navigable artificial waters can legally become a natural condition.

Burkman v. New Lisbon, 246 Wis. 547 (1944)

Prescriptive right to flow can be abandoned by non-use. Prescriptive use for mill dam cannot be extended to maintenance of flowage for park.

Muench v. PSC, 261 Wis. 492 (1952)

Trust doctrine extends to land only as long as it remains under navigable water. "Navigable in fact". PSC considers fishing, scenic beauty, boating, hunting as public rights in authorizing dam.

The existing "County Board Law" section of a state statute was held unconstitutional because it permitted the public right to enjoyment of fishing, hunting or natural scenic beauty in a navigable stream to be seriously impaired or destroyed through action of a county board. Such delegation of power by the Legislature, involving a complete abdication of the trust, is void.

Further; (1) Public Service Commission decisions are reviewable in court. (2) Any citizen of the state, even though not a riparian owner and living considerable distance from the waters concerned, can bring action as an aggrieved and directly affected party. (3) It is the duty of the state through its Conservation Commission to appear in behalf of the public before the Public Service Commission in their judicial capacity in such cases. (4) The Public Service Commission will be required to weigh public rights for recreational enjoyment of a stream against the public benefits which would result from the construction of a dam. (5) The right of the citizens of the state to enjoy our navigable streams for recreational purposes, including the enjoyment of scenic beauty, is a legal right that is entitled to all the protection which is given to financial rights.

## **NAVIGABILITY**

Olson v. Merrill, 42 Wis. 203 (1877)

A stream that is navigable at recurring times is navigable.

Diedrich v. Northwestern U.R. Co., 42 Wis. 248 (1877)

Rights of riparian on Lake Michigan. Waters are navigable when capable of navigation in fact without other conditions.

Muench v. PSC, 261 Wis. 492 (1952)

Trust doctrine extends to land only as long as it remains under navigable water. "Navigable in fact". PSC considers fishing, scenic beauty, boating, hunting as public rights in authorizing dam.

The Court delineated a new test for determining whether waters are "navigable in fact." It stated: "It is no longer necessary in determining navigability of streams to establish a past history of floating logs, or other use of commercial transportation, because any stream is *navigable in fact* which is capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreational purposes."

The existing "County Board Law" section of a state statute was held unconstitutional because it permitted the public right to enjoyment of fishing, hunting or natural scenic beauty in a navigable stream to be seriously impaired or destroyed through action of a county board. Such delegation of power by the Legislature, involving a complete abdication of the trust, is void.

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DeGayner & Co., Inc. v. Department of Natural Resources, 70 Wis.2d 936, 236 N.W.2d 217 (1975)

A stream is navigable if it is navigable in fact at recurring times each year long enough to make the stream useful as a highway.

"...the test [for navigability] is whether the stream has periods of navigable capacity which ordinarily recur from year to year, e.g., spring freshets, or has continued navigable long enough to make it useful as a highway for recreation or commerce. The test is not whether the stream is navigable in a normal or natural condition, but whether it is in some sense permanently navigable, i.e., regularly recurring or of a duration sufficient to make it conducive to recreational uses."

Existence of beaver dams on a stream for 37 years is a natural condition.

State v. Bleck, 114 Wis.2d 454 (1983)

State had jurisdiction under Secs. 30.12 and 30.15 because Bass Lake was navigable in fact. "Navigable waters" for the purpose of establishing jurisdiction under Chapter 30 are waters that are navigable in fact.

State v. Trudeau, 139 Wis.2d 91 (1987)

The State holds title to the beds of lakes up to the OHWM. An area need not be navigable to be lake bed. If land is part of a navigable lake, then the fact that the specific area cannot be navigated is irrelevant.

Village of Menomonee Falls v. DNR, 140 Wis.2d 579 (1987)

Navigability in fact is the sole test of navigability for purposes of Chapter 30. The balancing of public interests against the benefits to be gained from the proposed project occurs after a determination of navigability and pertains to the determination of whether to grant a permit for the project.

Examiner's conclusion that Lily Creek was navigable in fact was supported by substantial evidence (an experienced DNR water management specialist had navigated a canoe on the creek, a 12-year resident on creek stated that he had seen canoes on it, etc.).

Klingeisen v. DNR, 163 Wis.2d 921 (1991)

The DNR has jurisdiction over a waterway if it is navigable and public. The DNR does not have jurisdiction if the waterway is artificially created on private land.

An artificial channel which is connected to a natural and navigable body of water is public because it cannot exist on its own. If the volume or expanse of navigable water is increased artificially, the public right to use the water is increased correspondingly.

While sec. 30.10 specifically declares some waters navigable, it does not prevent other waters from being declared navigable as well. Once a body of water is found public and navigable, the DNR has jurisdiction.

Turkow v. DNR, 216 Wis. 2d 273(1998)

The DNR has the "authority, as well as the obligation, to determine whether the waters of the state are navigable in fact and therefore subject to regulation. Where the PSC had made a determination historically that this stream was not navigable, it was not "estopped"(legally precluded) from reviewing that determination to make a contemporary jurisdictional determination.

## **NUISANCE**

State v. Trudeau, 139 Wis.2d 91 (1987)

Under §87.30(2), Stats., the State has a cause of action to enjoin a public nuisance whenever there exists a violation of any local floodplain zoning ordinance.

## OBSTRUCTIONS

Mohr v. Gault, 10 Wis. 455 (1860)

Outlet of lake obstructed by natural causes. Remedy of flooded owner is to remove the obstruction. A natural obstruction in stream is not a nuisance.

Enos v. Hamilton, 24 Wis. 658 (1869)

Boom Company cannot wrongfully obstruct navigation. Legislature can authorize blockade of navigable stream by a boom.

Chapin v. Crusen, 31 Wis. 209 (1872)

Ferry franchise held not to interfere with free navigation in Wisconsin River.

Gates v. No. Pac. RR Co., 64 Wis. 64 (1885)

Railroad bridge obstructing navigation.

Union Mill Co. v. Shores, 66 Wis. 476 (1886)

Boom in Lake Superior as nuisance obstructing navigation. Difference between boom in lake and river. They are favored in rivers.

Edwards v. Wausau Boom Co., 67 Wis. 463 (1886)

Boom in part of river nonnavigable in fact except for running logs is proper if done in accordance with charter and is reasonable.

J. S. Keator Lumber Co. v. St. Croix Boom Crop., 72 Wis. 62 (1888)

Right of state to authorize construction of booms in navigable river (St. Croix) even though navigation by watercraft will be impaired. Effect of ordinance of 1787. Also discusses bridge cases. Extensive discussion of concurrent jurisdiction.

Velte v. U.S., 76 Wis. 278 (1890)

Who is responsible for flooding caused by third person placing obstructions without authority on U.S. dam.

Sebranke v. Kohlmeyer, 130 Wis. 352 (1907)

Obstructions in mill pond.

Flambeau R. L. Co. v. Lake Superior D. P. Co., 200 Wis. 31 (1929)

Action for damages for obstruction of navigable stream by a dam.

Muench v. PSC, 261 Wis. 492 (1952)

Trust doctrine extends to land only as long as it remains under navigable water. "Navigable in fact". PSC considers fishing, scenic beauty, boating, and hunting as public rights in authorizing dam.

The existing "County Board Law" section of a state statute was held unconstitutional because it permitted the public right to enjoyment of fishing, hunting or natural scenic beauty in a navigable stream to be seriously impaired or destroyed through action of a county board. Such delegation of power by the Legislature, involving a complete abdication of the trust, is void.

Further; (1) Public Service Commission decisions are reviewable in court. (2) Any citizen of the state, even though not a riparian owner and living considerable distance from the waters concerned, can bring action as an aggrieved and directly affected party. (3) It is the duty of the state through its Conservation Commission to appear in behalf of the public before the Public Service Commission in their judicial



capacity in such cases. (4) The Public Service Commission will be required to weigh public rights for recreational enjoyment of a stream against the public benefits which would result from the construction of a dam. (5) The right of the citizens of the state to enjoy our navigable streams for recreational purposes, including the enjoyment of scenic beauty, is a legal right that is entitled to all the protection which is given to financial rights.

State v. Sensenbrenner, 262 Wis. 118 (1952)

Riparian owners may deny WCD permission to cross their land to remove beaver dam, but WCD may approach dam from the stream itself; obstruction in navigable stream is a nuisance; riparian and public rights in stream bed.

Capt. Soma Boat Line, Inc. v. City of Wisconsin Dells, 56 Wis.2d 838 (1973)

State has power to prohibit erection of or maintenance of any dam, bridge or other structure within or over any navigable stream which may obstruct or impede the free navigation thereof.

Section 31.23 or 31.25 does not provide remedy for a private individual.

Capt. Soma Boat Line v. Wisconsin Dells, 79 Wis.2d 10 (1977)

Reasonable obstructions to navigation are permitted. Whether obstruction to navigation is unreasonable depends upon facts and circumstances of each case, including whether complainants knew of limitations imposed by the obstruction to navigation before they purchased riparian property.

## **ORDINARY HIGHWATER MARK**

Diana Shooting Club v. Husting, 156 Wis. 261 (1914)

The public rights in navigable waters includes the right to hunt; the trust doctrine extends to the protection of this right.

Ordinary highwater mark defined: "By ordinary high-water mark is meant the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic. And where the bank or shore at any particular place is of such a character that it is impossible or difficult to ascertain where the point of ordinary high-water mark is, recourse may be had to other places on the bank or shore of the same stream or lake to determine whether a given stage of water is above or below ordinary high-water mark."

Polebitzke v. John Week Lbr. Co., 163 Wis. 322 (1916)

Restates the Diana Shooting Club definition of the ordinary highwater mark.

State v. McDonald Lumber Co., Inc., 18 Wis.2d 173 (1962)

Questions as to quantum of proof required to show ordinary highwater mark for purposes of showing trespass on bed of lake by defendant's dock and slip.

Zinn v. State, 112 Wis.2d 417 (1983).

An erroneous OHWM determination by the DNR which resulted in a riparian's loss of sole riparian rights and the temporary loss of title to 200 acres of land presents a valid takings claim.

State v. Trudeau, 139 Wis.2d 91 (1987)

The State holds title to the beds of navigable lakes to the OHWM. The OHWM establishes the boundaries of the public trust in a navigable lake.

County Board of Adjustment could not properly grant a floodplain variance for any part of a development site below the OHWM. It could grant a variance for the portion of the project above the OHWM only if it would not be contrary to the public interest.

Public title to navigable waters extends to areas within the OHWM which are covered with aquatic vegetation. Lakebed may be heavily vegetated by plants rising far above the water.

## **PIERS**

Northern Pine Land Co. v. Bigelow, 84 Wis. 157 (1893)

Riparian has right to construct pier to navigable depth.

Atty. Gen. ex. rel. Askew v. Smith, 109 Wis. 532 (1901)

Pier built by nonriparian owner is a purpresture (permanent invasion of public property), but is not if built by riparian owner. Riparian owner may build pier to reach navigable water.

McCarthy v. Murphy, 119 Wis. 159 (1903)

Rights of riparian on navigable lake to build piers and wharves. Right to remove pier built by nonriparian owner.

Thomas V. Ashland S. & I. R. L. R. Co., 122 Wis. 519 (1904)

Rights to navigation of owner on shoreline of navigable lake.

Hathaway v. Milwaukee, 132 Wis. 249 (1907)

Ownership of "new" waterfront on Lake Michigan in Milwaukee

Doemel v. Jantz, 180 Wis. 225 (1923)

The rights of a riparian owner must be condemned. Such riparian rights include right to build piers and walls to prevent erosion as well as the right to accretions and relictions; trust doctrine; public rights to the high and low water line; the public cannot trespass on land between the high and low water lines when the water is low.

Jansky v. Two Rivers, 227 Wis. 228 (1938)

Rights of riparian owner on Lake Michigan where there had been accretion and reliction.

Bond v. Wojahn, 269 Wis. 235 (1954)

Plaintiff ran his boat into defendant's pier. Even though the plaintiff had no PSC permit for the pier, it was not a *per se* nuisance without any proof that it actually interfered with navigation.

Riparian owner given qualified title to center of stream subject to power of state to preserve public use. One right of a riparian owner is to build a pier to reach navigable water.

History of control of navigable waters in Wisconsin.

Colson v. Salzman, 272 Wis. 397 (1955)

State ownership in trust of land under inland, meandered, navigable lake.

Rondesvedt v. Running, 19 Wis.2d 614 (1963)

Alluvion formed by accretion belongs to owner of the upland to which it is contiguous, but the riparian right to access to water and circumstances change this rule so that accretions in front of riparian property goes to the owner so access can be maintained.

De Simone v. Kramer, 77 Wis.2d 188 (1977)

Riparian owner obtains rights and title to soil formed by accretions and relictions exclusive as to all the world, except where rights conflict with rights of public for navigation purposes. Accretion is the increase in land caused by the gradual deposit by water of materials on the shores, which deposit replaces the water at this location with dry land.

The prevailing doctrine that the causing or hastening of gradual deposits by artificial constructions, made by persons other than the benefited and claiming owner, does to prevent the doctrine of accretion from applying.

Nosek v. Stryker, 103 Wis.2d 633 (1981)

Discusses methods for determining riparian's exclusive rights to reach navigable waters. Exclusive use zone extends only so far as necessary to reach line of navigability. Riparian right limited to pier long enough and in position to reach nearest point of navigable water.

Sterlingworth Condominium Assoc. V DNR, 205 Wis 2d. 702(Ct. App., 1996)

This case deals with the cumulative impacts of piers, boats and other riparian impacts on the shores of navigable waters. It updates Hixon and provides excellent language on cumulative impacts of piers and boats in the near shore area. The Court stated:

"Whether it is one, nine or ninety boat slips, each slip allows one more boat which inevitably risks further damage to the environment and impairs the public's interest in the lakes....In our opinion, the DNR, in limiting Sterlingworth's permit...carried out its assigned duty as protector of the overall public interest in maintaining one of Wisconsin's most important natural resources."

## **PUBLIC RIGHTS**

Willow River Club v. Wade, 100 Wis. 86 (1898)

Stream bed title in riparian owner; right to fish is a public right. Question was as to right to take fish from Willow River; discusses ownership of bed of stream and trust doctrine. What is navigable water.

Distinction between navigable water of the United States and navigable water of the state. Who owns fish in water of United States as contrasted to state. Who owns fish in water. Riparian owners can't prevent fishing in navigable water.

Johnson v. Eimerman, 140 Wis. 327 (1909)

Pond created by dam in now navigable creek is navigable. Rights of public in artificial condition thus created.

Doemel v. Jantz, 180 Wis. 225 (1923)

The rights of a riparian owner must be condemned. Such riparian rights include the right to build piers and walls to prevent erosion as well as the right to accretions and relictions; trust doctrine; public rights to high and low water line; the public cannot trespass on land between the high and low water lines when the water is low.

Haase v. Kingston Co-op Creamery Assn., 212 Wis. 585 (1933)

Public use of navigable artificial waters can legally become a natural condition.

Munninghoff v. Wisconsin Conservation Commission, 255 Wis. 252 (1949)

Authority of commission to issue licenses for privately owned land under navigable waters; trust doctrine; riparian rights; whether stream is navigable or not; trapping not an incident to navigation and so no public right to trap; right of navigation includes incidental use of bottom.

Muench v. PSC, 261 Wis. 492 (1952)

Trust doctrine extends to land only as long as it remains under navigable water. "Navigable in fact". PSC considers fishing, scenic beauty, boating, and hunting as public rights in authorizing dam.

The existing "County Board Law" section of a state statute was held unconstitutional because it permitted the public right to enjoyment of fishing, hunting or natural scenic beauty in a navigable stream to be seriously impaired or destroyed through action of a county board. Such delegation of power by the Legislature, involving a complete abdication of the trust, is void.

Further; (1) Public Service Commission decisions are reviewable in court. (2) Any citizen of the state, even though not a riparian owner and living considerable distance from the waters concerned, can bring action as an aggrieved and directly affected party. (3) It is the duty of the state through its Conservation Commission to appear in behalf of the public before the Public Service Commission in their judicial capacity in such cases. (4) The Public Service Commission will be required to weigh public rights for recreational enjoyment of a stream against the public benefits which would result from the construction of a dam. (5) The right of the citizens of the state to enjoy our navigable streams for recreational purposes, including the enjoyment of a scenic beauty, is a legal right that is entitled to all the protection which is given to financial rights.

State v. Lake Delton, 93 Wis.2d 78 (1979)

Watching a water ski show is an incident of navigation. No single public use of navigable water is absolute.

Johnson v. Seipel, 152 Wis.2d 636 (Ct.App. 1989)

While the public has the right to unobstructed use of navigable waters for recreational and commercial purposes, users of public waters also owe a duty of reasonable care and use to riparian owners. The fact that a user of public waters does not violate any state or local boating laws does not relieve him/her of the duty to exercise ordinary care.

## **RIPARIAN RIGHTS**

Kimberly & Clark v. Hewitt, 79 Wis. 334 (1891)

Rights of riparians on stream to water, reasonable flow.

Northern Pine Land Co. v. Bigelow, 84 Wis. 157 (1893)

Riparian has right to construct pier to navigable depth.

Case v. Hoffman, 84 Wis. 438 (1893)

Right of landowner to have flow of stream through lands.

Priewe v. Wisconsin State Land & Imp. Co., 93 Wis. 534 (1896)

Right to drain lake under Ch. 169, Laws of 1887. Right of riparians to have normal level maintained. Defines riparian land. State can make grants in waters only for public purposes.

Thomas v. Ashland S. & I. R. L. R. Co., 122 Wis. 519 (1904)

Rights of owner on shoreline of navigable lake.

Doemel v. Jantz, 180 Wis. 225 (1923)

The rights of a riparian owner must be condemned. Such riparian rights include the right to build piers and walls to prevent erosion as well as the right to accretions and relictions; trust doctrine. Riparian ownership gives a person exclusive privileges of the shore for the purposes of access to his/her land and the water. However, in so far as the structures erected by the riparian owners into navigable waters interfere with the public rights of navigation, a riparian owner takes and holds riparian rights subject to the public rights; public rights to high and low water line; the public cannot trespass on land between the high and low water lines when the water is low.

Munninghoff v. Wisconsin Conservation Commission, 255 Wis. 252 (1949)

Authority of commission to issue licenses for privately owned land under navigable waters; trust doctrine; riparian rights; whether stream is navigable or not; trapping not an incident to navigation and so no public right to trap; right of navigation includes incidental use of bottom.

Bond v. Wojahn, 269 Wis. 235 (1954)

Plaintiff ran his boat into defendant's pier. Even though the plaintiff had no PSC permit for the pier, it was not a *per se* nuisance without any proof that it actually interfered with navigation.

Riparian owner given qualified title to center of stream subject to power of state to preserve public use. One right of owner is to build a pier to reach navigable water.

History of control of navigable waters in Wisconsin.

Colson v. Salzman, 272 Wis. 397 (1955)

State ownership in trust of land under inland, meandered, navigable lake.

Access easement granted to lot owners in a plat did not make them riparian owners. The original owner of the plat as a riparian owner, could permit lot owners to build piers subject to superior state and federal rights.

Bino v. City of Hurley, 273 Wis. 10 (1955)

Defendants passed an ordinance prohibiting swimming and boating on a lake - plaintiffs were riparian owners.

Riparian rights are substantial and valuable property rights and cannot be taken without compensation.

Dissent - riparian rights are subject to power of state or city to protect purity of water supply of a city.

Rondesvedt v. Running, 19 Wis.2d 614 (1963)

Alluvion formed by accretion belongs to owner of the upland to which it is contiguous, but the riparian right to access to water and circumstances change this rule so that accretions in front of riparian property goes to owner so access can be maintained.

Mayer v. Grueber, 29 Wis.2d 168 (1965)

Whether or not riparian rights are conveyed with the adjoining uplands depends largely upon the intent of the grantor, it is only presumed that the owner of the upland has riparian rights - this presumption doesn't apply where an artificial body of water is concerned. An adjoining owner must also own the right to use of the lake.

Nosek v. Stryker, 103 Wis.2d 633 (1981)

Discusses methods for determining riparian's exclusive rights to reach navigable waters. Exclusive use zone extends only so far as necessary to reach line of navigability. Riparian right limited to pier long enough and in position to reach nearest point of navigable water.

W.H. Pugh Coal Co. v. State, 105 Wis.2d 123 (Ct.App. 1981)

The right of a riparian owner to accretions upon his/her land is absolute against all the world except to the public's rights of navigation. However, a riparian owner is not allowed to take title to land accretion which was induced by his/her actions.

The fact that the State holds lake beds in public trust is not sufficient to grant it title to accretions on a riparian owner's land without just compensation.

Zinn v. State, 112 Wis.2d 417 (1983)

A riparian owner who temporarily lost title to 200 acres of riparian property and temporarily lost his sole riparian rights due to an erroneous OHWM determination presented a valid takings claim.

State v. Bleck, 114 Wis.2d 454 (1983)

While the public trust doctrine is designed to protect the rights of all members of the public in navigable waters, Wisconsin law has recognized the existence of certain common law rights that are incident of riparian ownership (i.e., access to and from lake, right to build wharves and piers, right to swimming, boating, and boating, etc.). The fact that §30.12 only allows riparians to apply for structure permits does not violate the public trust doctrine. Rather, the legislature simply recognized the common law distinction between riparians and nonriparians. Such riparian rights are still subject to the public's paramount right and interest in navigable waters.

Cassidy v. Dept. of Natural Resources, 132 Wis.2d 153 (Ct.App. 1983)

An easement holder does not have the status of a riparian owner under §30.12, Stats. and therefore may not be granted a structure permit.

de Nava v. DNR, 140 Wis.2d 213 (Ct.App. 1987)

Even if an easement grants the holder the right to install a mooring buoy and boat lift, holder of such easement is not a riparian owner.

Riparian owners have the exclusive right of access to and from navigable waters to his/her shore.

Riparian owners also have the right to build piers, harbors, wharves, booms and similar structures in aid of navigation.

Riparian rights are not freely alienable in the case of natural lakes.

Johnson v. Seipel, 152 Wis.2d 636 (Ct.App. 1989)

While the public has the right to unobstructed use of navigable waters for recreational and commercial purposes, users of public waters also owe a duty of reasonable care and use to riparian owners.

Klingseisen v. DNR, 163 Wis.2d 921 (1991)

Riparian owners along an artificial channel did not own the water flowing from a navigable waterway and therefore could not rightfully exclude the public from using the water over their land.

Godfrey Co. v. Lopardo, 164 Wis.2d 352 (Ct.App. 1991)

Sec. 30.131, Wis. Stats., gives riparian rights to easement holders in limited circumstances. That is, it grants an easement holder the right to maintain a pier or wharf if the statutory criteria are met.

Each riparian owner is entitled to exclusive possession to the extent necessary to reach navigable waters, to have reasonable ingress and egress to navigable waters, and to have reasonable access for bathing and swimming. Thus, in a boundary dispute, the court was to balance the rights of all lakefront owners and the public.

Sterlingworth Condominium Assoc. V DNR, 205 Wis 2d. 702(Ct. App., 1996)

This case deals with the cumulative impacts of piers, boats and other riparian impacts on the shores of navigable waters. It updates Hixon and provides excellent language on cumulative impacts of piers and boats in the near shore area. This case discusses what are considered reasonable uses for riparian proprietors for the placement of structures in the near shore area.

## **STRUCTURES AND FILLS**

Doemel v. Jantz, 180 Wis. 225 (1923)

The rights of a riparian owner must be condemned. Such riparian rights include the right to build piers and walls to prevent erosion as well as the right to accretions and relictions; trust doctrine; public rights to high and low water line; trespass on land between high and low water line.

S. S. Kresge Co. v. Railroad Commission, 204 Wis. 479 (1931)

Action for declaratory judgment of plaintiff's right to erect a building over bed of Rock River in Beloit. No one can be given power to invade the bed of a stream which would preclude the state from removing such structures when necessary in aid of navigation.

Luening v. PSC, 261 Wis. 516 (1952)

Federal navigability test.

State v. PSC, 275 Wis. 112 (1956)

Application by City of Madison to fill on bed of Lake Wingra at Vilas Park - granted - review sought by State of Wisconsin at request of Wisconsin Conservation Commission.

Trust doctrine is not violated by minor alterations - lakes do not have to remain in the same condition for all time when done for public purposes.

Permit gives permission to use the property only, it is not a grant of the property.

Hixon v. Public Service Commission, 32 Wis.2d 608, 146 N.W. 2d 577 (1966)

While the State of Wisconsin holds the beds of navigable waters in trust for all its citizens, the trust doctrine does not prevent minor alterations of the natural boundaries between water and land. However, in this case, the Court ordered a 120 foot long breakwater to be removed as an obstruction. The Court noted that the State of Wisconsin must look at the cumulative impacts of fills, stating

"There are over 9,000 navigable lakes in Wisconsin covering an area of over 54,000 square miles. A little fill here and there may seem to be nothing to become excited about, but one fill, though comparatively inconsequential, may lead to another, and another, and before long a great body of water may be eaten away until it may no longer exist. Our navigable waters are a precious natural heritage; once gone, they disappear forever."

State v. Lamping, 36 Wis.2d 328 (1967)

Floating bog defined. A material factor to be considered in determining whether a peninsula such as that involved in the instant case is a floating bog on land is the degree to which it is anchored or fastened to

the underlying lake bed; if it is so securely anchored or fastened thereto that its surface does not rise or fall with the raising or lowering of the lake's water level, it would no longer constitute a floating bog.

Claflin v. State Department of Natural Resources, 58 Wis.2d 182 (1973)

Determination that specific structure is detrimental to public interest on grounds that it impairs natural beauty of lake is proper basis for denial of a permit for the structure. The natural beauty of our northern lakes is one of the most precious heritages Wisconsin citizens enjoy. It is entirely proper that the natural beauty should be protected against specific structures that may be found to mar that beauty.

State v. McFarren, 62 Wis.2d 492 (1974)

Bulkhead line defined.

A bulkhead line is not merely the natural shoreline but is a line legislatively established by a municipality which may differ from the existing shoreline. Existence of bulkhead is part of description of violation of s. 30.12.

State v. Deetz, 66 Wis.2d 1 (1974)

Section 30.12, Stats., prohibiting deposit of materials or placing of any structure on the bed of a navigable water without a permit merely restates the common law and was designed to prohibit only deliberate fills.

The State's contention that under the public trust doctrine a cause of action arises whenever there is interference with the public's right to use navigable waters, irrespective of the cause thereof, is rejected because while the "public trust" doctrine grants both the State and citizens acting on its behalf the standing to vindicate rights created by existing state law, it does not of itself create a cause of action.

State v. Bleck, 114 Wis.2d 454 (1983).

Only riparian owners may obtain a structure permit under §30.12. This is merely a recognition of the common law distinction between riparian and nonriparian rights.

Since "structure" is not defined for purposes of Chapter 30, the word is to be given its common meaning. The dictionary definition of "structure" is "something constructed or built...something made up of more or less interdependent elements or parts..."

A nonriparian's ski jump constituted a "structure" within the meaning of §30.12.

The application of §30.12 to a nonriparian's ski jump does not regulate the public's recreational use of navigable waters, but only the placement of unlawful structures.

Cassidy v. Dept. of Natural Resources, 132 Wis.2d 153 (Ct.App. 1983)

The holder of an easement is not a riparian owner for the purposes of §30.12 and therefore cannot be granted a structure permit.

A riparian owner does not have an absolute right to place structures on a lakebed because the structure must meet the statutory criteria before the DNR will issue a permit allowing the structure.

de Nava v. DNR, 140 Wis.2d 213 (Ct.App. 1987)

Even if an easement grants the holder the right to install a mooring buoy and boat lift, the easement holder is not a riparian owner. An easement only grants the right to use or privilege in the land of another and not title. Easement holder could not maintain boat buoy and boat lift under §30.12, Stats.



## **SURFACE WATERS**

Thomson v. Public Service Commission, 241 Wis. 243 (1942)

The Supreme Court adopted the Restatement of Torts definition of surface waters. This definition is as follows:

"The term 'surface waters' is used to describe those casual waters which accumulate from natural sources and which have not yet evaporated, been absorbed into the earth or found their way into a stream or lake. The term does not comprehend waters impounded in artificial ponds, tanks, or water mains."

Houselet v. DNR, 110 Wis.2d 280 (Ct.App. 1981)

Surface waters and lakes are not mutually exclusive categories. Therefore, the DNR properly classified part of a lake as a wetland.

Under the Restatement definition of "surface waters" adopted in Thomson v. Public Service Commission, a lake cannot be a wetland and a lake at the same time. However, Wisconsin regulations define surface waters more broadly than Thomson (NR 101.03(4) & NR 102.01(7)). In this case, the broader definitions controlled.

Crest Chevrolet, etc. v. Willemsen, 129 Wis.2d 129 (1986)

Under the reasonable use doctrine, an analysis of the social utility of the actor's conduct which interferes with the natural surface water flow is not required.  
Discussion of reasonable use doctrine.

## **TAKINGS**

Just v. Marinette County, 56 Wis.2d 7 (1972)

Compensation is necessary when restrictions are placed on property in order to create a public benefit rather than to prevent a public harm. A shoreland ordinance which maintains the natural *status quo* of the environment does not create a public benefit, but alleviates a public harm.

The Court stated, "Is the ownership of a parcel of land so absolute that man can change its nature to suit any of his purposes?...An owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others...It is not an unreasonable exercise of the [police power] to prevent harm to public rights by limiting the use of private property to its natural uses."

If a regulation is to avoid a public harm, then effects on private landowners are not compensable unless the regulation results in a value diminution to the landowner which is so great as to amount to a confiscation.

The depreciation of land value resulting from a state restriction is not to be based on what the land would be worth if it could be filled and used for commercial or residential development, but on the use of the land in its natural state. In reaching this conclusion, the Court stated,

"The Justs argue their property has been severely depreciated in value. But this depreciation of value is not based on the use of the land in its natural state but on what the land would be worth if it could be filled and used for the location of a dwelling. While loss of value is to be considered in determining whether a restriction is a constructive taking, value based upon changing the character of the land at the expense of harm to public rights is not an essential factor or controlling."

W.H. Pugh Coal Co. v. State, 105 Wis.2d 123 (Ct.App. 1981)

The fact that the State holds lake beds in public trust is not sufficient to grant it title to accretions on a riparian owner's land without just compensation.

Zinn v. State, 112 Wis.2d 417 (1983).

A compensable taking occurs when a government restriction placed on property "practically or substantially renders the property useless for all reasonable purposes."

Temporary takings are compensable.

The loss of sole riparian rights and of title to 200 acres of riparian property due to an erroneous OHWM determination by the DNR presents a valid takings claim.

The fact that the DNR had not intended to take Zinn's property is irrelevant because it is the effect of the State's action that triggers the Just Compensation Clause, not the government's intent.

M & I Marshall Bank v. Town of Somers, 141 Wis.2d 271 (1987)

The takings analysis outlined in Just is not limited to a situation where the lands involved are connected to the state's duty under the public trust doctrine. Whether the regulated land is a wetland within a shoreland area, or land within a primary enforcement corridor, or an isolated swamp - the test to be applied is the same: public benefit vs. public harm.

Otte v. DNR, 142 Wis.2d 222 (Ct.App. 1987)

The DNR's order to a riparian landowner to restore a filled ditch at his own expense was a compensable taking because it deprived Otte of substantially all beneficial use of a portion of his land (i.e., he could no longer use the land occupied by the ditch for any other purpose.)

Sec. 32.01(1), Stats, does not authorize the DNR to take a person's private property for the purpose of aiding it in regulating and controlling a lake's level.

## **TRUST DOCTRINE**

Mendota Club v. Anderson, 101 Wis. 479 (1899)

Question was as to status of a certain area on the north end of Lake Mendota. The building of the Farwell Dam in 1850 raised the level of water in the lake some 4 feet giving rise to the question of whether the area was navigable water and of ownership to its bottom, as contrasted to rights claimed through a tax deed allegedly conveying the areas. Discusses trust doctrine and also status of artificial condition created by dam.

Pewaukee v. Savoy, 103 Wis. 271 (1899)

This was an appeal from a judgment restraining defendants from placing a fence along street line to prevent frontage therefrom to Pewaukee Lake. The natural shoreline did not reach the limit or the street, but an artificial line maintained more than 20 years brought the water level to the street limit. Case discusses trust doctrine. Holds artificial condition had become its natural condition by existence of new level for more than 20 years and, as regarding the submerged lands, are characteristics of a natural lake to that extent. Dedication by riparian owners conclusively presumed where it exists for 20 years. Status of streets terminating on navigable water.

Priewe v. Wis. S. L. & Imp. Co., 103 Wis. 537 (1899)

Validity of scheme to drain Muskego Lake Purportedly under ch. 169, Laws of 1887, ch. 202, Laws of 1891. Right of riparians to have normal level maintained. Defines riparian land. State cannot destroy the rights of a riparian owner on a lake without compensation or without the owner's consent. Discusses trust doctrine - legislature can't free itself of the trust.

Muench v. PSC, 261 Wis. 492 (1952)

Trust doctrine extends to land only as long as it remains under navigable water. "Navigable in fact". PSC considers fishing, scenic beauty, boating, and hunting as public rights in authorizing dam.

The existing "County Board Law" section of a state statute was held unconstitutional because it permitted the public right to enjoyment of fishing, hunting or natural scenic beauty in a navigable stream to be seriously impaired or destroyed through action of a county board. Such delegation of power by the Legislature, involving a complete abdication of the trust, is void.

Further; (1) Public Service Commission decisions are reviewable in court. (2) Any citizen of the state, even though not a riparian owner and living considerable distance from the waters concerned, can bring action as an aggrieved and directly affected party. (3) It is the duty of the state through its Conservation Commission to appear in behalf of the public before the Public Service Commission in their judicial capacity in such cases. (4) The Public Service Commission will be required to weigh public rights for recreational enjoyment of a stream against the public benefits which would result from the construction of a dam. (5) The right of the citizens of the state to enjoy our navigable streams for recreational purposes, including the enjoyment of a scenic beauty, is a legal right that is entitled to all the protection which is given to financial rights.

State v. PSC, 275 Wis. 112 (1956)

Application by City of Madison to fill on bed of Lake Wingra at Vilas Park - granted - review sought by State of Wisconsin at request of Wisconsin Conservation Commission.

Trust doctrine is not violated by minor alterations - lakes do not have to remain in the same condition for all time when done for public purposes.

Permit gives permission to use the property only, it is not a grant of the property.

Just v. Marinette County, 56 Wis.2d 7 (1972)

Trust doctrine and state's exercise of police power.

The active public trust duty of the state in respect to navigable waters requires the state not only to promote navigation but also to protect and preserve those waters for fishing, recreation, and scenic beauty. The public trust extends to lands adjacent to navigable waters. Shoreland zoning is one means for the state to accomplish its duties under the public trust.

"The state of Wisconsin under the trust doctrine has a duty to eradicate the present pollution and to prevent further pollution in its navigable waters. This is not, in a legal sense, a gain or a securing of a benefit by the maintaining of the natural status quo of the environment." Since shoreland zoning merely protects the status quo of the environment, it cannot be held to result in a compensable taking.

Case examines conflict between the state's duty as a protector of the public interest in stopping the despoliation of natural resources and an owner's asserted right to use his property as he wishes. Restricting conversion of land, when land in present state has public benefit, is not an unreasonable exercise of police power. The Court stated, "Is the ownership of a parcel of land so absolute that man can change its nature to suit any of his purposes?...An owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others...It is not an unreasonable exercise of the [police power] to prevent harm to public rights by limiting the use of private property to its natural uses."

State v. Deetz, 66 Wis.2d 1 (1974)

Section 30.12, Stats., prohibiting deposit of materials or placing of any structure on the bed of a navigable water without a permit merely restates the common law and was designed to prohibit only deliberate fills.

The State's contention that under the public trust doctrine a cause of action arises whenever there is interference with the public's right to use navigable waters, irrespective of the cause thereof, is rejected because while the "public trust" doctrine grants both the State and citizens acting on its behalf the standing to vindicate rights created by existing state law, it does not of itself create a cause of action.

W.H. Pugh Coal Co. v. State, 105 Wis.2d 123 (Ct.App. 1981)

The fact that the State holds lake beds in public trust is not sufficient to grant it title to accretions on a riparian owner's land without just compensation.

State v. Bleck, 114 Wis.2d 454 (1983)

Public trust doctrine has been expanded to protect not only commercial navigation, but also recreational and nonpecuniary interests. Even though the state holds the beds of navigable waters in trust for the public, it still may authorize limited encroachments upon these beds if the public interest would be served by doing so.

The application of §30.12 to a nonriparian's ski jump did not violate the public trust doctrine because riparian rights under that statute were still subject to the paramount public interest in navigable waters and because the statute only regulated the placement of structures on the beds of navigable waters, not the recreational use and enjoyment of those waters.

Wisconsin Environmental Decade v. DNR, 115 Wis.2d 381 (1983).

In deciding whether to issue water permits, the DNR must consider the public interest in navigable waters, but the public trust doctrine was not to be "expanded to cover ... downtown preservation." In other words, the DNR need not consider secondary socioeconomic impacts in making the threshold decision of whether to prepare an EIS.

State v. Trudeau, 139 Wis.2d 91 (1987)

The boundary of the public trust associated with the bed of a navigable body of water is the OHWM. The state holds title to the beds of lakes up to the OHWM.

Village of Menomonee Falls v. DNR, 140 Wis.2d 579 (1987)

The delegation of authority under the public trust doctrine is permissible when in furtherance of that trust and where delegation will not block the advancement of the paramount public rights in navigable waters. Therefore, the village did not have the power to modify the creek under home rule.

The enjoyment of scenic beauty is one of the public rights in navigable waters to be protected by the State under the public trust doctrine.

Klingseisen v. DNR, 163 Wis.2d 921 (1991)

To be effective, the public trust doctrine must include the protection of public, artificial waterways that are directly and inseparably connected with natural and navigable waters.

## **WATERCOURSES**

Hoyt v. City of Hudson, 27 Wis 656 (1871)

Discusses distinction between the flow of surface waters and a watercourse. The Court defines "watercourse" as follows:

"The term 'watercourse' is well defined. There must be a stream *usually* flowing in a particular direction, though it need not flow continually. It may sometimes be dry. It must flow in a definite channel, having a bed, sides or banks, and usually discharge itself into some other stream or body of water. It must be something more than a mere surface drainage over the entire surface of a tract of land, occasioned by unusual freshets or other extraordinary causes. It does not include the water flowing in the hollows or ravines in land which is the mere surface waters from rain or melting snow, and is discharged through them from a higher to a lower level, but which at other times are destitute of water. Such hollows or ravines are not in legal contemplation water-courses."

Lessard v. Stram, 62 Wis. 112 (1885)

The mere occasional flow of surface water through a ravine does not constitute a "watercourse." The Court applied the Hoyt definition in rejecting a claim that surface water occasionally flowing out of a coolie and over lowlands in no discernable pattern was a watercourse.

Lally v. Rossman, 82 Wis. 147 (1892)

In government grants, the watercourse itself is the boundary, not the meander line.

## Appendix 2

### ADMINISTRATIVE AND MANUAL CODES AFFECTING WATER REGULATION AND ZONING PROGRAM

#### Administrative Code

NR 1.95	Wetlands Preservation, Protection and Management
NR 115	Wisconsin's Shoreland Management Program
NR 116	Wisconsin's Floodplain Management Program
NR 117	Dam Construction
NR 118	Standards and Criteria for the Lower St. Croix Natural Scenic Riverway
NR 129	Floodplain and Shoreland and Mapping Grant Program
NR 150	Wisconsin Environment Policy Act Procedures for Department Actions
NR 299	Water Quality Certification
NR 300	Fee for Water Regulation Permits and Approvals
NR 301	Relationship of Water Regulation Enforcement and Permit Approvals
NR 302	Management of Wisconsin Wild Rivers
NR 320	Regulation of Bridges In or Over Navigable Waterways
NR 325	Maintenance, Repair or Removal Procedures for Boathouses and fixed Houseboats on Navigable Waterways
NR 326	Regulation of Piers in Navigable Waterways
NR 330	Warning Signs and Portages for Dams
NR 340	Sand, Gravel or Construction Excavation and Reclamation Associated with Navigable Waterways and Adjacent Areas
NR 345	Removal of Material from the Beds of Waterways
NR 346	Dredging Contract Fees
NR 347	Regulation of Dredging Projects

#### Manual Codes

1462.4	Liaison Between Corps of Engineers and...
1606.1	WEPA Procedures for All DNR Actions
3281	Water Quality Certifications as Required by Section 401
3500.6	Delegation of Authority to Approve:....
3506.1	Permit and/or Approval Procedure:....
3506.2	Procedures for Processing Violations
3506.3	Procedure for Time Limit Extension
3535.1	Application for Sand Blanket Permit
3536.1	Riprap Shore Protection
3539.1	Temporary Drawdown of Impoundment
3551.1	Floodplain Management
3552.1	Sewer and Water Systems in Floodplain Areas - Plan Review
3560.9	Portage levee Plan
3561.11	Authority Required for Bridges and Culvert Crossing:....
3562.1	Procedure for Investigating Dams to Achieve Boating Safety Objectives
3564.1	Plan Approval for Dams on Nonnavigable Streams
3565.1	Department Projects Located In Adjacent to Navigable Waters
3570.4	Wild Rivers Program
3591.1	Implementation of the Lower St. Croix River Protection Act
9341.1	Cash Collecting and Permitting Procedures

## APPENDIX 3

### WEPA Action Needed for Major Water Regulation and Zoning Actions

#### A. BACKGROUND

Chapter NR 150, Administrative Code, sets out the procedures for Department compliance with the Wisconsin Environmental Policy Act (WEPA). Section NR 150.03 categorizes Department actions by type to aid in the determining whether an Environmental Impact Statement (EIS) is needed. Type I actions always require an EIS. No water regulatory actions are Type I by themselves. Type II actions may or may not require an EIS depending on the individual significance. All Type II actions require an Environmental Assessment (EA). Type III actions do not normally cause significant environmental effects. Unless the Department determines otherwise, these actions will not require an EA or an EIS.

The following type list shows the actions by their statutory authority that fall into each of the action types. The numbers under the statute number are the specific NR 150 reference.

This type list is only intended to act as a fast reference to the WEPA action needed for the major water regulation and zoning actions. NR 150 should be consulted for further guidance and directions.

Type II Actions (Require EA)

30.10 Approval of barge  
150.03(2)(b)11 fleeting areas

30.11, 24.39 Bulkhead lines and/or  
150.03(3)(b)5. lakebed leases

30.12(2), Solid piers, groins,  
150.03(2)(b)6. breakwaters and jetties  
constructed in navigable  
waters excluding those  
identified in NR 326.04(3)(a).

30.18(1)(a), Surface water diversion  
107.05 for maintaining water  
150.03(2)(b)9 levels and for mining

30.19, Connected waterway  
150.03(2)(b)3. construction; and grading  
and unconnected  
waterway construction  
when related to mining  
or mineral extraction or  
including draining or  
filling of wetlands.

30.195, Changing the stream  
150.03(2)(b)4. course involving over  
500 feet of stream length

30.196, Enclosures of navigable  
150.03(2)(b)10 waters

Type III Actions

30.10, 30.12, 31.23 Private bridges and  
150.03(3)(b)10. culverts.

30.12(3)(a) 1, 2, 3, 4 Other structures  
150.03(3)(b)(6). including maintenance  
work on existing  
structures, sand blankets,  
fish cribs, riprap and ford

30.13, Pierhead lines  
150.03(3)(b)5.

30.18(1)(b) Surface water diversion  
150.03(3)(b)9. for agricultural and  
irrigation purposes

30.19, Boatslips, unconnected  
150.03(3)(b)3. waterways and grading  
unless related to mineral  
extraction or filling or  
draining of wetlands.

30.195, Changing the stream  
150.03(3)(b)4. course if involving 500  
feet or less of stream thread.

87.30, Approval of floodplain  
150.03(3)(b)11 & 13 ordinances and  
amendments and  
floodplain, floodway  
studies and delineations.

59.971,144.26,61.357,62.231  
150.03(3)(b) 12. Approval of ordinances,  
wetland inventory maps  
and amendments.

NR 299, "401" - water quality  
150.03(3)(b)42 determinations



Type II Actions (Require EA)

- 30.20,  
150.03(2)(b)2. All dredging that involves 3000 cubic yards or more of material or potential for hazardous wastes in the sediments exists or involves draining or filling of wetlands. Maintenance dredging projects authorized within 10 years from the date of application are excluded provided no hazardous wastes or draining or filling of wetlands
- 31.02,  
150.03(2)(b)(8). New levels or drawdowns of controlled lakes and flowages if dam has at least 6 foot head and holds 15 acre-feet of more of water
- 31.05,31.12,31.13  
150.03(2)(b)7. Construct, raise, enlarge dams, and non-navigable stream dam plan approval where the dam has at least 6 foot head and holds 15 acre-feet or more of water at maximum water level.
- 31,185,  
150.03(2)(b)7. Dam abandonment if dam has at least 6 foot head and holds 15 acre-feet or more at maximum water storage elevation

Type III Actions

- 30.20,  
150.03(3)(b)2. Maintenance dredging for authorizes projects within' the past 10 years and all other dredging less than 3000 cubic yards provided no hazardous wastes m sediments or no draining or filling of wetlands
- 31.02,31.19,  
150.03(b)8. New levels or drawdown if dam has less than 6 feet head and holds less than 15 acre-feet water storage. Emergency dam safety drawdown
- 31.05,31.12,  
150.03(3)(b)7. Construct, raise, enlarge dams and non-navigable stream dam plan approval if dam has less than 6 foot head and holds less than 15 acre-feet of water at maximum storage
- 31,185,  
150.03(3)(b)7. Dam abandonment if dam has less than 6 foot head and holds less than 15 acre-feet of water at minimum water storage; all transfers of ownership.

**CORRESPONDENCE/ MEMORANDUM****STATE OF WISCONSIN**

Date: January 30, 1987

File Ref: 3500

To: WZ Program Staff

Put In: Water Regulation Handbook Appendix 3

From: Scott Hausmann - WZ6

Distribution: All Program Staff

Subject: Water Regulation Handbook Update - Appendix 3

Revisions to NR 150 go into effect on February 1, 1987. This directive is intended to clarify these latest changes to NR 150. This rescinds and replaces the May 4, 1984 revision.

The NR 150 Administrative Code organizational format is new in that all of this program's regulatory items are listed in one place (see NR 150.03(8)(f)). Central office staff should note the type list for plans and policies (see NR 150.03(6)(b) 2, 3 and 4). There has also been an additional type action category added which, for the most part, reduces the number of mandatory EA's. Although this new list may have deleted some EA's, it has added a few new activities that were previously unlisted.

Changes you should note are as follows:

1. An additional type action category has been added (see NR 150.03(1), (2), (3) and (4) and NR 150.20). Note especially Type III actions. This is the new type action category. Although no EA is needed (except in unusual cases) either a news release or legal notice is required to comply, at a minimum, with this type action. Copies of the release/ notice should be sent to BEAR.
2. Please note that channel changes less than 500 feet in length are in this new Type III category and a news release is required if we don't issue a notice. Like other Type III actions, an EA is not normally required.
3. A news release or legal notice for dam construction on nonnavigable waters 'is required. Although a new requirement, we believe a standard news release form could be developed for small dams on nonnavigable waters that would basically be a fill in the blank (i.e., description and location of dam and DNR contact person) to comply with this requirement.
4. Drawdowns for non-emergency safety inspections now require a news release. District Coordinators and the Dam Safety Inspection Unit should be particularly cognizant of this requirement.

As you review NR 150 and familiarize yourself with its content, you should pay additional attention to the following sections because they directly or indirectly influence the Water Regulation and Zoning program. Those sections are: NR 150.02(18), NR 150.03(5)(a)II, NR 150.08(8)(c)8 and 17, NR 150.10 and NR 150.20.

If you do get a substantial public response to one of the new Type III notices, you should consult with your local environmental impact coordinator to decide what to do. BEAR is drafting guidance on this.

SH:el

## CORRESPONDENCE/ MEMORANDUM

## STATE OF WISCONSIN

DATE: February 25, 1999

INSERT: Appendix 3 Water Regulation Handbook

TO: Regional Directors  
Air and Waste Division Bureau Directors  
Water Division

FROM: David Meier – AD/5

SUBJECT: WEPA Compliance for After-the-Fact Permits

A recent situation where an after-the-fact Air permit was issued raised questions regarding the need for Wisconsin Environmental Policy Act (WEPA) compliance in circumstances involving after-the-fact Department regulatory decisions. The purpose of this memo is to clarify the issue and provide guidance for your affected program staff who may encounter a situation where someone is seeking an after-the-fact approval or permit.

All Department decisions that may affect the quality of the human environment are subject to WEPA. **This includes all regulatory actions, whether before or after the fact.** We have further defined what this means in terms of process and documentation through the action type list in NR 150. Thus, for example, many regulatory actions are identified as Type III or IV which do not normally require either an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

The specific form of appropriate WEPA compliance for an after-the-fact situation (that would before the fact be a Type II action requiring at least an EA) should be determined on a case-by-case basis through consultation with the appropriate ISS staff. For decentralized regulatory decisions this consultation should be through the regional EA staff. For central office decisions it should be with Jim Pardee in ISS's Environmental Analysis and Liaison Section. We expect most after-the-fact situations can be appropriately handled with a brief memo to the file explaining why no EA is required. In some circumstances, such as a high level of public controversy or potential impacts to sensitive resources, an EA may be required,

The program staff making the regulatory decisions are responsible for assuring WEPA compliance for after-the-fact permits and approvals. Please provide this guidance to the affected program supervisors.

cc: Jim Pardee - SS/6  
Regional EA staff  
Jim Addis - SS/6



## **Appendix 4**

### **BENCHMARK AND FIELD BOOK PROCEDURES**

If survey work is required under chapters 30 and 31, it should be based on a vertical control point or benchmark.

A benchmark is a point of known elevation and position. It enables surveyors to reestablish elevations taken from previous surveys without duplicating the survey.

A benchmark establishes or refers to a datum plane. Benchmarks established by the United State Geological Survey (USGS) or the National Geodetic Survey (NGS, formerly the United States Coast and Geodetic Survey) refer to the mean sea level of the Atlantic Ocean taken over a 19-year cycle. Mean sea level is the datum plane most commonly referenced in Wisconsin, but there are several other datum planes: 1) Corps of Engineers datum (New York City datum), is commonly used on the Fox and Mississippi Rivers; 2) International Great Lakes Datum; 3) local city datum; and 4) assumed or site datum. You should always be aware of the datum you are working with.

#### ***FINDING A BENCHMARK***

Before establishing a benchmark, check to see if any already exist within the immediate area. USGS and NGS survey markers are often (but not always) shown on topographic maps. These maps are a good place to start looking. A printed list of benchmarks is available from the central office, which locate and describe USGS and NGS benchmarks. The list is referenced to the 15-minute quadrangles.

Also check the Department's computer-based benchmark file. This file presently contains Department data and some federal agency data. We are in the process of expanding the file to include Wisconsin DOT data and USGS data. The file should be a definitive source of all vertical control data in Wisconsin by January of 1984. Until this data is complete, contact the Central office for a more complete search of the area.

#### ***USING THE BENCHMARK FILE***

To use the computer data file you will need: (1) a computer terminal capable of communicating with the Madison Area Academic Computer Center (MAACC), and (2) a valid user number on the system which allows MAACC to bill you for their services. The program is entirely tutorial, which means that all you need to know is how to access the computer. The procedure is as follows:

1. Access a computer line by dialing
  - a. 263-1111 or 263-1100 (low speed)
  - b. 263-1265 (high speed)
2. Activate the terminal
  - a. Type: UWLG if you are using a hard copy terminal (you get a paper printout)
  - b. Type: UWTR if you are using a CRT (a video display)
3. Enter your ID number

Type exactly as following: @RUN, (five digit project number),(10 digit ID),\$(dollars you are willing to spend)

Approximate cost will be \$2.00

If you do not have a project number or 10-digit ID, see your management information specialist.

4. Enter password

All ID's are protected by a password which you must know in order to access an account.

5. Run the program by typing

Type exactly as follows: @ADD DNRBMI\*RUN.RETRIEVALS

The program will then be loaded onto the computer and will take you step-by-step through the selection of benchmarks.

The basic request for information (what you will type in) will be in the form of an equation. For example, if you need all the benchmarks in Wood County the request would look like this; CNTY EQ 'WOOK' where County or CNTY is the item of information used to sort through the file and EQ is the relation.

Items that you may request are:

<u>Item</u>	<u>Meaning</u>
NO	Benchmark Number
QQ	Quarter Quarter Section
Q	Quarter Section
SEC	Section
T	Township
R	Range
CNTY	County
AGCY	Establishing Agency
ORD	Order of Accuracy
REF	Project
ID	Field File Number

Allowable Relations are:

<u>Relation</u>	<u>Meaning</u>
EQ	Equal To
NE	Not Equal To
LT	Less Than
GT	Greater Than
LE	Less Than or Equal To
GE	Greater Than or Equal To

The relation and items may be put together in any order, but the most common selection will usually be a legal description.

EXAMPLE: I want the closest benchmark to the mouth of Turtle Lake in Sec. 14, T3N, R15E

My request will be:

T EQ 3 AND R EQ '15E' AND SEC EQ 14

Note that all values that are alpha-numeric must be entered with quotes. Township values do not need a qualifying N for north since all townships in Wisconsin are north.

The computer responds by printing out all benchmarks within Sec. 14, T3N, R15E. A wide array of commands can be formulated to retrieve the data in almost any format you want.

### ***SELECTION OF DATUM PLANE***

After determining the nearest available benchmark, you must decide whether to use the benchmark or establish your own arbitrary assumed datum plane. If the work is temporary and there will be no long-term use of the information, a temporary benchmark can be used. Temporary benchmarks include nails in trees, invert or tops of culverts, marks in roadways, and, in general, any stable position likely to last the length of the project in an undisturbed position. It is a good idea to establish two benchmarks per project to ensure survival of the datum plane.

If the project is to be permanent and there is no nearby permanent benchmark, you should establish one. Figure I shows a cross-section of a properly established permanent monument. Wherever possible, it is desirable to situate the benchmark so that it protrudes about 6 inches above the ground. Excavation of the hole can be done with an auger or a post hole digger. The hole should be slightly over excavated in order to ensure that the monument can be backfilled and compacted. Backfill material should be a clean sand and gravel. The concrete used should be a six bag mix with a maximum slump of 3 to 4 inches or an equivalent dry bag mix. (See American Concrete Institute Standards.) Concrete should be compacted in lifts of no more than 12 inches during placement. The surface of the concrete should be finished to a smooth texture. Following finishing the cap should be placed so that its underside is flush with the top of the concrete.

Other acceptable permanent benchmarks are chiseled squares on dams, bridges or other highway structures, rock outcroppings or large boulders such as leaverites.

As time permits temporary benchmarks that are used for long-term projects should be converted to permanent benchmarks.

Both temporary and permanent benchmarks should be described in the field book so they can be easily relocated. Reference each benchmark with two or more ties to permanent or semi-permanent objects. The ties should be measured to the nearest tenth of a foot and should also contain a direction. It should be possible to reestablish the benchmark's position by swinging arcs from the position of the reference points to the approximate location of the monument.

### ***FIELD BOOK PROCEDURES***

All benchmarks established by the Department must be properly documented in a field book. Over the course of years, it may be necessary to verify your survey by reviewing the notes. It is, therefore, very important to number and index your field book so that your work can be retrieved at a later date. The Central office assigns each member of the Bureau staff a sequentially numbered book. After the book is complete, they are kept in file drawers. District field books should also be carefully numbered. To avoid being confused with existing field books, district numbers should be prefixed with the district identification, i.e., WC, SE, SD, LM, NC and NW. If

questions arise, this very simple filing system will allow for easy relocation of your work. A four-page index should be located at the front of your field book listing the project and page. Figure 2 shows a properly indexed field book.

Field files, memos and letters referencing your surveys should reference your field book number.

All surveys must be closed loops. A copy of a properly recorded level survey is shown in Figure 3. Note two items in this figure. On the right of the page in the lower half there is a page check. Every page of levels should be accompanied by a page check. Page checks are a good way to avoid arithmetic blunders. A page check should show the difference between the sum of the foresights and the sum of the backsights, excluding side shots, to be equal to the difference in elevation on that page.

The permissible closure is on the bottom of the right-hand side of the page. The closure and distance of the survey determine the accuracy of the survey. There are three levels or orders of work commonly referred to in surveying, first, second and third. First order is the most accurate, and third order is the least accurate. All of our work should meet or exceed third order standards, which is 1 part error in 3000. To accomplish this, rod readings should be taken to the nearest 0.01 foot.

To determine if your survey is within the allowable closure for third order work, first determine what the actual closure was and second determine the allowable closure. You will need to record the total distance of the survey by stadia or other methods. Allowable closure is given by the formula below:

$$C = 0.05 \text{ times the square root of } M$$

C = Allowable closure in feet

M = Distance in miles

Alternatively the distance may be omitted in the determination of allowable closure if the sights are limited to about 300 feet. In this case allowable closure becomes:

$$C = 0.03 \text{ times the square root of } N$$

C = Allowable closure in feet

N = The number of instrument set ups

## ***RECORDING THE DATA***

After you have established the benchmark, fill out a Vertical Control Station form 3500-48 and send it to the Central office with a copy of your notes. It will be assigned a benchmark number and will be incorporated into the Department's data base.

If water levels are surveyed or read from a staff gage, they should be recorded on a Water Level Data form 3500-27. Be sure to include your field book number. Water level readings should be sent to the area, district or central office as appropriate.

## ***REFERENCES***

For technical standards and background information, consult a technical reference (see Appendix 7).



Figure 1

DETAIL OF CONCRETE MONUMENT INSTALLATION  
FOR VERTICAL CONTROL

[image missing]

Figure 2

FILLED OUT LOG BOOK

[image missing]

## Appendix 5

### WATER MANAGEMENT EQUIPMENT

#### A. BACKGROUND

Water management field staff needs the following equipment to do their job efficiently and safety.

Each water manager need not have all items in their personal inventory but they should have ready access to all equipment. Equipment such as flow meters and dissolved oxygen meters might be borrowed from water quality staff; boats might be borrowed from fisheries management or law enforcement staff; slide projectors from service centers; stereoscopes and planimeters from forestry or water resources, etc.

This list does not include normal office furniture and equipment.

#### B. EQUIPMENT

ITEM DESCRIPTION	PURPOSE
Computer capable of supporting ArcView	Essential for office work
Automatic Level and Tripod (optical or laser)	Needed for establishing stream and lake levels and benchmarks
Level Rod, 4 section 16-25 ft., fiberglass or similar	As above
Tape Measures in 1/100 ft.: 12-25 ft pocket tape 150-300ft fiberglass or similar tape	Needed for measuring distances
Abney Hand Level or similar	Needed to measure slopes, angles
Folding Engineers Rule in 1/100 ft.	Needed to measure distances
Field Notebooks (waterproof paper)	Needed to record level and surveying work; other data
Camera (35mm and digital recommended)	Needed to document events and violations
Binoculars	Used for surveillance work and field inspections
Soil Probe, Sharpshooter (trenching spade), Munsell color charts for hydric soils	Needed for determining soil types, depth
Hand Compass	Needed for field investigations, violation surveying, orienteering
Pocket Thermometer	Needed to measure water temperatures
Machete/Hand Ax	Needed for field investigations, survey work
Pick-type Hammer and small mallet (two-pound)	Needed to set benchmarks, test concrete on structures, dams
4-wheel drive personally assigned vehicle	Needed for field inspections
Calculator	Needed for mathematical calculations

Engineers and Architects Scales (triangular)	Needed to measure distances on plans, maps, etc.
Drafting Kit (drawing instruments)	Needed for drafting and mapping purposes
Slide Viewer	Needed to view slides of events, violations
Slide Projector	Needed for meetings, displays, etc.
Planimeter	Needed to measure distances, areas from maps and aerial photographs
Stereoscope (Pocket)	Needed to view aerial photographs in stereo
Microfiche Reader	Needed to review case files, original survey maps, etc.
Tape Recorder, Cassette	Needed to facilitate field inspections and dictation needs
Personal Flotation Device	Personal protection
Hard Hat	Personal protection
Rain Gear, both regular and with built in flotation (recommend Gore-Tex, Kool-Dri, or similar for both)	Personal protection
Waders, Hipboots, Kneeboots & Hiking boots	Personal protection
Snowshoes & Bindings	Needed for winter field work
Briefcase, backpack and duffel bag	Needed for business purposes, carrying needed materials to meetings, or field investigations.
Canoe/Kayak, Canoe Racks, Paddles	Needed for navigability tests and field inspections
Boat, Oars, 20-40 hp Motor, Trailer	Needed to make inspections on lakes and rivers
Stream Flow Meter	Needed for determining allowable diversion rates for irrigation
Dissolved Oxygen Meter	Used to monitor quality of dredge return carriage water, etc.
Field guides to aquatic plants, wildflowers, grasses, sedges, Trees, shrubs, birds, insects, amphibians, reptiles, mammals Examples: Vegetation of Wisconsin (Curtis) Michigan Flora, Vol 1 & 2 (Voss) Manual of Aquatic Plants (Fassett) Through the Looking Glass (WDNR)	Used to complete inspection reports
Water & Wetland regulatory guidebooks, statute books	Reference
Revised 08/4/00 by Simon	

## **Appendix 6**

### **FILING PROCEDURES**

Purpose. Much time can be wasted looking for filed information. An organized filing system saves time by assuring that all material pertaining to a specific project is together. Good filing procedures enable people using the files fast access to the information they need. If files are kept in proper order when not in use, finding a file is an easy task. More people in the office can easily find needed information.

History. The first water regulatory actions were the many dams authorized by the legislature from 1836 to 1910. The Department has no formal files on these actions other than the yearly laws of Wisconsin.

The Railroad Commission (1905-1932) was authorized by Chapter 362, Laws of 1905, as the first agency responsible for water regulation matters. The Public Service Commission (1931-1967) was authorized by Chapter 183, Laws of 1931, to replace the Railroad Commission as the agency responsible for water regulation matters and to administer an expanded regulatory program. The "Kellett Reorganization Bill," Chapter 75, Laws of 1967, transferred water regulation matters to the Department of Resource Development for 1 year and then to the Department of Natural Resources. This transfer included 5 engineers, one file clerk, two secretaries and all of the records.

The Railroad Commission used two types of file numbers. WP-1, 2, 3 ... were assigned for formal cases and numbers alone were assigned to informal files.

The Public Service Commission used three types of file numbers. The 2-WP-1, 2, 3 ... were assigned to formal cases. A letter and a number were assigned for informal files (C-, D-, E-). I-WPs were assigned to complaints. No one is around to tell us why A and B were skipped at the beginning.

The Department of Resource Development/Department of Natural Resources started with three types of file numbers. The 3-WRs were assigned numerically for formal cases. Informal files receive a letter and a number (G-xxx) and H-xxx thus far). A new letter is assigned when number 9,999 is reached. Ms. Bennett, file clerk at the time, had a hang up with continuing in alphabetical order and skipped F. I-WR's were assigned to complaint files, but were later discontinued and are now assigned informal file numbers.

A point system is used in the informal filing system at the central office. Entities (county, city, village, town, company or individual) are assigned numbers on a sequential basis. Once an entity receives a number, all future correspondence with that entity regarding different matter is assigned the original number plus a point number. For example, the first correspondence with the City of Madison was assigned the number 975. The next correspondence with the city, on a different matter, was assigned 975. 1, and so on. Other examples are:

All Department matters	H-2.xxx
Informal complaints	H-12.xxx
Corps of Engineers Matters	
not requiring a DNR permit	H-30.xxx
DOT bridges	H-100.xxx
FERC	H-103.xxx

There was also a point system used for dredging and sand blankets, which was discontinued when decentralization started in 1974. All dredgings, for example, were assigned a number at the beginning of each year and point numbers were assigned to each applicant.

For filing codes presently used see the section on filing codes.

Field files are established and maintained for all dams that have had a formal action. Occasionally field files exist for dams where no formal action has taken place. The file is assigned a county number along with a point number as it is established. The field file contains reports and photos taken during inspections along with a history sheet, recorded water level sheets and a benchmark summary. Negatives for photos are kept in a separate file cabinet. A record card is kept in the central office filing section indicating the original authorization along with any further orders that are issued regarding the dam.

A counterpart of the field file is the 855 file. It has the same file number after the 855 as the field file. For example 855/24.2. This file contains reports of inspections along with correspondence regarding the involved dam. The dam plans are also kept in this file. These files have been microfilmed but some also remain in hard copy.

Lake files are established for lakes not controlled by a dam, where benchmarks have been established and water levels recorded. They only receive the county number and are filed alphabetically by lake name. These files contain reports and photos of inspections, recorded water level sheets and a benchmark summary.

Field books, which contain survey field notes by central office staff, are indexed and retained in the central office and date back to 1913. See Appendix 4.

Equipment. All of the following equipment may be ordered through normal channels.

Folders and guides (dividers). The orderly appearance and efficiency of a file depend largely upon the careful preparation, use and arrangement of folders and guides in the drawers. Folders keep the papers together and in order. Guides are signposts to speed up filing and finding operations. The incorrect use of either will retard, rather than aid, these operations.

Folders - the Kraft .011 reinforced top file folder is suitable for most files. Folders come in boxed of 100, half left and half right-hand tab position.

Guides - are primarily a funding device. For example, they can separate years and/or types of authority.

Cross-Reference Sheet, Form 9500-28. Use a cross-reference sheet to keep a record of a project in two different filing locations. This may be necessary when a project needs more than one formal file number, for example, a project involving an enlargement and dredging. A cross-reference sheet can be placed where the dredging file would be and the file itself can be placed with the 30.19 files.

"Out" Cards. These are used for charging out both letters and folders. When material is removed from a file drawer, the "out" card is substituted showing who received it, the file number and the data. When the material is returned, the card is removed for future use. "Out" cards are an efficient check on responsibility for the file and eliminates the necessity for the "good memory." Check "out" cards periodically with the person who is holding the file to be sure that he/she still has it and still needs it. When a file is returned, check to be sure that no material unrelated to the file has been added. An open folder on a desk is an invitation for insertion of unrelated material.

Index Card, Form 9500-35. Maintain index cards for all formal files. As a minimum, two index cards for a single project should be prepared: the body of water and the applicant's name. Additional index cards should be prepared as needed. For a bulkhead line, cards would be prepared for the body of water, the municipality and the property owner. Develop index cards for existing formal files as soon as practicable consistent with staff

availability. The Water Regulation Section, District and Area offices can maintain index cards for informal case files at their discretion.

Assignment-Decision Card, Form 9500-36. Maintain assignment-decision cards for all formal files arranged according to activity. This card is an easy way to know what the next file number will be.

Docket Card, Form 9500-36. Districts: Maintain docket cards for all formal files. They may be discarded after the project is completed if desired.

Filing. Arrangement in filing cabinets. Arrange guides and folders in the file drawer starting at the front of the drawer. The sequence of the drawers should be from top to bottom of the cabinet, unless filing across proves more efficient. Whichever method is used, be consistent.

Do not crowd material in a drawer. Crowded drawers are untidy and will be a constant irritation. Crowded folders and drawers can lead to errors in filing. Leave ample working space in each drawer - at least four inches.

Formal case files should be filed numerically by file number. To avoid the loss of material, staple all material into the folder, except for large drawings and maps. Arrange informal files by county, by waterway and under the waterway alphabetically by correspondent informal file numbers can be assigned and then files arranged numerically or material can be filed by informal file codes. Formal case files and informal files should not be filed in the same drawer.

Nonfiling material. Do not file letters of inquiry that are answered by a publication. Keep a 'ten day" file that can be used to check mail which is returned unclaimed.

Do not mix publications or advertising catalogs with filing material. Keep these in a bookcase or library.

#### Filing Codes

##### A. Informal Files

Informal files do not need a formal case number, since a permit is not needed.

All correspondence should have a department file code assigned as well as any informal or formal file number.

Code - Follow the Department code schedule below, and/or assign informal file numbers. For example, informal North Central District files could be NC-1, NC-2, NC-3.

<u>Code</u>	<u>Primary Subject</u>
3500	WATER MANAGEMENT (correspondence on matters which cannot be specifically coded)
3510	IRRIGATION
3520	ENFORCEMENT (obstructions, illegal actions, violations of permits, etc.)
-1	Dams, illegal
-2	Deposits
-3	Fences
-4	Irrigation
-5	Physical alternations

-6 Structures

3530 PHYSICAL ALTERATIONS

-1 Bulkhead lines

-2 Channel changes

-3 Dredging

-4 Enlargements

-5 Sand blankets

-6 Submerged crossings

-7 Water levels

-8 Land drainage

3540 POWER

-1 Power plan siting

3550 SHORELAND AND FLOODPLAIN ZONING, GENERAL

-1 Shoreland and floodplain zoning (specific to a municipality)

-2 Plats

-3 Federal Flood Insurance Program

3560		STRUCTURES
	-1	Boathouses
	-2	Breakwaters
	-3	Bridges
	-4	Dams
	-5	Docks
	-6	Levees
	-7	Piers
	-8	Fish cribs
	-9	Shoreland protective structures
3580		GREAT LAKE SHORELINE MANAGEMENT
	-1	Coastal management
		-1 Shore erosion
		-2 Access to water
		-3 Fisheries - wildlife
		-4 Coastal Management Council
		-5 Contracts/agreements
		-6 District liaison
	-2	Small craft harbor
	-3	Shore damage
		-2 U.S. Corps of Engineers
		-3 Contractor
	-4	Great Lakes level regulation
		-1 Reports
	-5	Training and assistance program
3590		LOWER ST. CROIX RIVER (PROTECTION ACT)



## B. Formal Case Files

Formal case files are generated as a part of the permit process in the water regulation program.

Coding - Assign a formal activity number according to the coding schedule below when an application is complete.

Southern District	3-SD-	(year)	- (activity/number in that year)
Southeast District	3-SE-	(year)	- (activity/number in that year)
Lake Michigan District	3-LM-	(year)	- (activity/number in that year)
North Central District	3-NC-	(year)	- (activity/number in that year)
Northwest District	3-NW-	(year)	- (activity/number in that year)
West Central District	3-WC-	(year)	- (activity/number in that year)

Numbers - Each calendar year the numerical sequence shall revert to 01 and proceed forward.

Activity:

Example of detailed coding:

0XX	-	Dredging
1XX	-	Bulkhead lines
2XX	-	Sand blankets
3XX	-	Diversions
4XX	-	Stream straightening
5XX	-	Ponds, enlargement, grading
6XX	-	Bridges
7XX	-	Structures
8XX	-	Dams
9XX	-	Enforcement

District: Southern  
Date: January 1, 1982  
Activity: Sand blanket  
Coding: 3-SD-82-201

At the discretion of the district, the filing code number may be further coded to show the area:

Example:

District: Northwest  
Date: January 1, 1982  
Activity: Sand blanket  
Area: Brule  
Coding: 3-NW-82-2101 (District - year - activity/area number/number in that year)

### File Folder Preparation

Applicant's name    3-SD-82-201  
                             3530-5    Sand Blankets

Projects Requiring More Than One Type of Permit. When a project requires more than one type of permit, each activity receives its own formal activity number. All permits should be filed in one formal case file folder, with cross references in the other formal case files.

Microfilming. Formal case files are retained in hard form for a period of five years. If the file is no longer active after five years, it is microfilmed.

District case files are forwarded to the Water Regulation Section. The district file and section file are combined into one file and purged before microfilming.

The security copy of filmed material is retained at the State Historical Society. Hard copy can be destroyed according to authority from the State Committee on Public Records. Copies of formal case files are retained in the Water Regulation Section District Office and Area Office. Informal material of the water regulation section is retained in the section. Hard copy of bulkhead line maps and ordinances, which have not always had formal case files, are forwarded to the appropriate district office.

Authority Index. The Authority Index is a listing of permits issued under the Water Regulation program. At the present time this is incomplete as the old informal approvals for dams on nonnavigable streams and bulkhead lines are not listed. They will be added as time permits. Also to be added will be the dams which were authorized under the laws before the existence of the Railroad Commission. The file number is read as is for permits since 1977. Before that only the first and fourth parts are read. For example 2WP-SD-58-01264 is File 2-WP-1264. The extra numbers are needed for the computer to accept them.

1380I

**CORRESPONDENCE/ MEMORANDUM**

**STATE OF WISCONSIN**

DATE: June 30, 2000 FILE REF: Appendix 6 - Water Regulation Handbook  
TO: Water Regulation Guidebook holders  
FROM: Susan Sylvester, AD  
SUBJECT: Entry of Decisions in Waterway-Wetland Permit Database

This memo establishes statewide procedures to be used beginning July 1, 2000 to maintain data on waterway and wetland permits and approvals. Please insert the following pages in Appendix 6 of your Water Regulation Guidebook.

The format of this information is intended to begin the transition to a format that can be electronically maintained and distributed for ultimate incorporation into the Department-wide handbook system.

## **Entry of Decisions in Waterway-Wetland Permit Database**

### **BACKGROUND:**

In addition to day-to-day work tracking, consistent data on our waterway and wetland decisions can be used to analyze local, regional and statewide trends and impacts to waterways for measuring accomplishments and in basinwide water resource planning. You will be able to sort the data in both pre-programmed routine ways as well as special ways needed for workload analysis or program evaluation. With the increased computer capability of our Conservation

Word re-programming now underway will make it as easy to enter a decision as to type a letter.

With the Access-Arcview link being programmed now, you will be able to enter the project location by pointing your cursor to a spot on the electronic copy of the topographic map. Once debugging and documentation are complete, the data system can be made available to any staff person specifically assigned to routinely make decisions in your region (e.g., service center staff who process short forms).

### **PROCEDURES:**

#### **Data to be Entered**

All of the following actions are formal and must be entered into the permit database:

1. Permits or orders issued under chapter 30 or 31, both long and short forms
2. Manual code approvals
3. Water quality certifications for wetlands under s. 281.15, both individual certifications and courtesy letters
4. Natural waterbody permits under 26.733 (These decisions will be entered centrally until further notice - field staff provide an electronic or paper copy of all decisions to Dan Helsel, FH/3.)

#### **Data Entry Protocol**

- The waterway/wetland data system uses two types of docket numbers, one for formal actions and one for informal actions.
- Each activity or aspect of a project on a single site requiring authorization by statute receives a separate docket number.
- Extensions in the time of the permit use the original docket number.
- Project modifications that trigger the equivalent of a new review should receive a new docket number.
- A common set of activity names (with associated codes) is needed in order to sort the data easily. The current list of activities is attached and is in your database. The Bureau of Fisheries and Habitat will solicit changes to the list every two years. Requested changes may be sent to the bureau file manager through your regional aquatic habitat expert anytime.
- Entry of informal actions is at the discretion of each region - tracking must be consistent on a regional basis. Regions should develop handbook supplements for their informal tracking in consultation with the bureau. Some informal activity names and codes have been set up for decisions that were commonly tracked informally. Use the activity name that the decision being entered fits under. Use the comment field to provide a more detailed description of activities where specified in the activity code list and elsewhere if useful- we can use the words in the comment field as a search tool.

## FORMAL ACTIVITY CODES

Formal actions are written decisions made under specific statutory authorities in response to an application or petition. A common set of names is needed in order to sort the data easily. The list below shows the level of sorting we will do. The database's look-up table will include historic as well as current names so that no matter which you type in, the proper activity name and code will show up in the data and documents. The list does not separate every conceivable type of action (e.g., water trampoline, stream barb) - the sheer variety of activities precludes this. The list generally maintains codes for activities that were tracked historically so that the legacy data can be analyzed easily. A few activities were further broken down to better track key activities (e.g., shore stabilization for structures other than riprap or seawalls; and infrastructure, recreational and habitat replacing miscellaneous structures, for structures not specifically named). *The comment field can (and in a few categories is specifically recommended) be used to further describe activities, including the purpose and any other key words that can help in future searches.*

CATEGORY or HISTORIC NAME(S)	ACTIVITY	CODE
	Bulkhead line	30.11
<b>Bridges and culverts</b>		
	Bridge, clear span short form	30.123A
	Bridge < 35	30.123B
	Bridge > 35	30.123C
	Culvert < 35 feet	30.1230
	Culvert > 35 feet	30.123E
	Changing stream course	30.195
<b>Constructed waterways</b>		
Unconnected pond short form	Standard unconnected waterway	30.19A
Unconnected pond	Unconnected waterway	30.19F
Ultimately connected pond	Ultimately connected waterway	30.19B
	Connected enlargement	30.19C
<b>Dams</b>		
	Dam abandonment	31.185A
	Dam alteration	30.185C
	Dam construct/operate	31.06
	Dam ordered alteration	31.18A
	Dam raise or enlarge	31.13
	Dam transfer of ownership	31.185B
	Dam plan approval	31.12
	Dam plan approval - nonnavigable stream	31.33
	Dam drawdown	31.19
<b>Diversion</b>	Diversion	30.18
	Diversion - emergency	30.18A
<b>Dredging</b>		
	Dredging	30.20A
	Dredging - ag drainage	30.20B
Cable crossing	Dredging - utility installation	30.20C
	Enclosure	30.196
	Grading	30.190
	Jurisdictional declaration (227.42 process)	30.10B
	Levels	31.02
	Nonmetallic mining	30.19E
Gravel pit	Nonmetallic mining	30.19E



<b>CATEGORY or HISTORIC NAME</b>	<b>ACTIVITY NAME</b>	<b>CODE</b>
	Obstruction	30.10A
	Pierhead line	30.13
<b>Structures</b>		
Pier	Pier	30.12A
Wharf	Wharf	30.12A
	Shore stabilization (use comment field)	30.12B
Riprap short form	Standard riprap	30.12C
Retaining wall	Seawall	30.12D
	Seawall	30.12D
Fish crib short form	Standard fish crib	30.12E
Pea gravel blanket	Pea gravel	30.12F
Sand blanket	Pea gravel	30.12F
Ford short form	Standard ford	30.12G
Nesting platform short form	Standard nesting platform	30.12H
Boat ramp short form	Standard boat ramp	30.12J
	Barge fleeting site	30.12L
Water ski jump	Water ski structure	30.12M
Boatshelter	Boatshelter	30.12N
Miscellaneous structure	Recreational structure (use comment field)	30.12P
Dry hydrant short form	Standard dry hydrant	30.12Q
Piling short form	Standard piling	30.12R
Miscellaneous structure	Fish/wildlife habitat structure(use comment field)	30.12S
Miscellaneous structure	Infrastructure (use comment field)	30.12T
Outfall structure	Infrastructure (use comment field)	30.12T
Wetland fill	Wetland water quality certification	401

## **Appendix 7**

### **REFERENCE MATERIALS**

Reference materials can be helpful in evaluating proposed projects. They can provide the technical information used for day-to-day administration of water regulations. The materials listed are only some of the helpful references. The materials on the list are not required but are some that have been found useful in the past. Ultimately, each individual should develop a reference library that is the most useful and meaningful to him.

#### ***LAWS, MANUALS, CODES***

- Wisconsin Department of Natural Resources. Wisconsin Natural Resources Laws, Publication 8-1020
- Wisconsin Department of Natural Resources. Water Regulation Handbook
- Wisconsin Department of Natural Resources. Floodplain-Shoreland Zoning Administration Manual
- Department of Natural Resources Administrative Codes
- Department of Natural Resources Manual Codes

#### ***MAPS, SURVEYS, DATA CATALOGS***

- United States Geological Survey Topographic Quadrangle Maps - 7'h' and 15'
- National Oceanic and Atmospheric Administration, National Ocean Survey, Lake Survey Charts
- County Plat Maps
- Wisconsin Department of Natural Resources County Wetland Inventory Maps
- State Cartographer's Office County Cartographic Catalog
- United States Department of Agriculture, Soil Conservation Service, County Soil Surveys
- United States Geological Survey, Water Resources Data for Wisconsin - Water Year (Published Yearly)
- United States Geological Survey, Benchmark List for Wisconsin
- National Geodetic Survey, Benchmark List for Wisconsin (Wisconsin Lines)
- Wisconsin Department of Natural Resources, County Surface Water Resource Inventories
- Wisconsin Department of Natural Resources, Lake Use Reports
- Wisconsin Department of Natural Resources, Bureau of Fish Management, Wisconsin Trout Streams, Publication 6-3600(80)
- Wisconsin Department of Natural Resources, Bureau of Fish Management, Wisconsin Lakes, Publication 7-3600(81)



- Wisconsin Department of Natural Resources, Wisconsin Trout Lakes, Publication 3-3600(73)
- Wisconsin Department of Natural Resources County Natural and Scientific Area Inventory (computer listing and file)
- Wisconsin Department of Natural Resources, Bureau of Fish Management Wisconsin Lakes Directory, Report No. 82. 1976.
- Wisconsin Department of Natural Resources, Bureau of Water Regulation and Zoning Dam Inventory (Computer Printout)
- Wisconsin Department of Natural Resources, Bureau of Water Regulation and Zoning, Benchmark Inventory (Computer data file)
- Wisconsin Department of Natural Resources, Bureau of Water Regulation and Zoning, Flood Data Repository (Computer file)

## **BOOKS**

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## **Appendix 8**

# **MANAGEMENT SYSTEM FOR WATER REGULATION AND ZONING PROGRAM MATERIALS**

Since 1787 when the Northwest Ordinance declared the need for protecting Wisconsin's waterways, innumerable legislators, judges and administrators have been refining the standards and procedures for water management. New forms of guidance were needed to ensure fair and uniform application of the myriad legislative mandates, legal precedents and procedural statements. More people needed guidance and interpretation as water uses diversified and water regulation and zoning programs decentralized.

Program materials now include statutes, administrative codes, manual codes, handbooks, brochures and application forms.

The goals of "managing" program materials are:

- to keep materials accurate and up-to-date through timely and thorough reviews
- to minimize the total number of documents and the variety of forms of information
- to systematically address needs for guidance and incorporate new ideas for materials
- to develop and maintain distribution of program materials to appropriate users

This memo contains:

- steps in the bureau review process requests for new program materials
- steps in the departmentwide review process
- descriptions of the various forms of guidance

## **BUREAU REVIEW OF EXISTING MATERIALS**

### ***In general***

Basically, the review system provides a reminder that a document needs to be reviewed; assigns responsibility for the actual work and monitors progress until the document is revised as appropriate and distributed.

Actual work will vary from writing new rules in response to requests, to incorporating program guidance memos into the appropriate form(s), to correcting misleading graphics in public information brochures.

The bureau review system will apply to all bureau documents. Those which are reviewed under the Department directives system will, after bureau review, be subject to directive system procedure.

The timing and frequency of review for each of these forms of guidance are listed below:

<u>Form</u>	<u>Timing</u>	<u>Frequency</u>
Statutes	January-February	biennial - even years
Administrative Rules	November	biennial* even # -- even years odd # -- odd years
Manual Codes*		BY DEPARTMENT SYSTEM based on time of biennial adoption
Handbook*		BY DEPARTMENT SYSTEM January-February biennial 1/2 each year
Public Info. Materials		December yearly
Application Forms		March yearly
Program Guidance		January yearly

\*Indicates review and distribution control by the Department directives system.

### ***Steps in review***

#### **I) Reminder**

The basis for the reminder is a monthly calendar indicating when each form of guidance is to be reviewed (Attachment 1).

TRAINING OFFICER - 5  
(Coordinator)

#### **PROGRAM ASSISTANT**

1. Checks the calendar each month before the Bureau Management meeting
2. Notifies training officer of:
  - a. Materials to be reviewed in the following month
  - b. All deadlines especially those that have not been met
3. Requests comments by memo from all names on distribution list of each document coming up for review
4. Request that assignee submit delinquent materials by an agreed date
5. Records assignments and deadlines
6. Notifies person who made initial request of new deadline

#### **II) Assignment**

#### **SECTION CHIEF -**

1. With training officer discusses appropriate response to request.

2. Section chief, as part of work planning process or mid-year request, assigns one staff member to review each document (or group of related -documents) and sets deadline for completion of review with staff member. Section chief advises training officer of assignment details.
3. Resolves or extends unmet deadlines.
4. Reports assignments deadlines, and revisions to program assistant.

### III) Review

#### Reviewer -

1. Considers the following questions:
  - Is the information still necessary for anyone to have?
  - Who needs to have this information? Does the current form of the information reach those who need it? See form descriptions in this memo.
  - Is any of this information presented in another form to the same audience? Could this - or another - document be eliminated?
2. If the document might be eliminated:
  - a. With section chief and training officer, discuss reasons for elimination of or alternative forms for the information

#### Grounds for eliminating a document:

- Information is no longer needed by program staff.
  - Information is presented in another form to the same audience.
  - Document could be produced/distributed more efficiently in another form.
- b. If decision is to eliminate, send a memo to distribution list saying that unless objections are received within two weeks, the document will be eliminated. Explain reasons for elimination or where information will subsequently appear. If no objections are received, notify distribution list of final decision to eliminate.
  - c. If information in an eliminated document is to appear in other existing documents, indicate the pieces of information to be put into each document. Put copies of marked up document into training officer's file under each particular document.
  - d. If the form of the entire document is to be changed, draft and finalize the new document according to the next section of this memo.

### IV) Revision

Revision takes place only if:

- document is needed in its current form
  - form of information needs to be changed entirely
  - there is significant objection to eliminating a document but changes are needed if it is to be retained
- content is outdated or inaccurate

#### Reviewer -

1. Drafts revised document

- a. incorporate comments from training officer's file
- b. check the list of Program Guidance Memos for possible information to add
- c. edit for clarity and conciseness using "Ready Rules of Regulator's Rhetoric" (Attachment 3)
- d. consult description of forms in this memo. Audience section should determine the appropriate vocabulary and level of detail.

2. Coordinate outside review of draft

- a. with section chief and training officer, decide if and to what extent outside review is necessary
- b. select list of reviewers if needed
- c. send draft to reviewers, requesting comments and setting comment deadline
- d. incorporate valid comments; comments received too late for consideration should be put in training officer's file under that document.

3. Deliver final typed version to program assistant for distribution.

PROGRAM ASSISTANT -

1. Distributes document
2. Records distribution date

## **YOUR IDEAS FOR NEW PROGRAM MATERIALS**

An established process for turning ideas into program guidance and other materials will enable:

- monitoring of progress on ideas
- development of materials in proper form so that they reach the audience that needs them.

### **I) Request for program materials**

**YOU -**

Send completed materials request form to program assistant (suggested form, attachment 4)

**PROGRAM ASSISTANT -**

Logs in materials request and sends to training officer (suggested log sheet, attachment 5).

**TRAINING OFFICER -**

1. Puts request on agenda of next section chiefs' meeting.
2. Reviews request with section chief to determine:
  - Who needs the requested information? Will the suggested form reach this audience?
  - Is the information requested presented in one or more other forms?
3. After above questions are answered, inform program assistant of assignment and due date.

### **II) Preparation of new program materials**

**Reviewer -**

1. Drafts text of new document
2. Asks selected reviewers for comments, setting deadlines for their return
3. Incorporates valid comments; file comments received too late for consideration in training officer Is comment file
4. Advise reviewers of action taken on their comments and reasons why
5. Arranges for illustrations with I&E if needed
6. Section chief and Bureau Director approve final version
7. Delivers final typed version and original request form to program assistant for copying and distribution or to I&E for production and distribution

## **DEPARTMENT SYSTEM FOR REVIEW**

The Office of Planning and Analysis (OPA) has an established directives system for updating administrative and manual codes and handbooks, documents that are used by more than one program.

OPA sends reminders to the appropriate bureaus two years after initial distribution of each document and biennially after that. The bureaus work together to complete the revisions. OPA prints and distributes the revised document.

Bureau review of the handbook and manual codes in response to OPA reminders should be done according to the bureau review procedures (I through III). There are a few specific steps for coordination with the OPA system:

### **PROGRAM ASSISTANT -**

Notifies OPA of name of review coordinator and deadline for review.

### **Reviewer -**

In making revisions, requests comments and coordinates changes with reviewers in other bureaus and with district staff.



## FORMS OF PROGRAM MATERIALS

The seven forms of permanent program material are:

- 1) statutes
- 2) administrative codes
- 3) handbook
- 4) manual codes
- 5) public information
- 6) application permit approval  
and program management forms
- 7) Training materials

All statements or explanations of program policies or procedures should end up as one of these seven forms. The forms of information should be limited so that staff and others can be sure that they have complete program information.

Program guidance memos, Attorney General and Bureau of Legal Services opinions, official letters and similar statements should be considered temporary forms for information. If the information in them is of long-term value it should be put into one of the seven forms.

The forms of program material are distinguished by:

- 1) The "force" or authority they carry
- 2) The audience they are intended for
- 3) Format
- 4) Content

Audience is perhaps the most important feature for program staff who are proposing and producing materials. Whether information is needed by the public, water regulation and zoning staff or other agency staff is an important determinant of the appropriate form for the information. The audience should set the level of technical detail and vocabulary, depending on its familiarity with the program.

## **FORMS OF PROGRAM MATERIALS**

### ***Statutes***

Statutes are laws. If unresolved, violations of water regulations are punishable by fines, imprisonment or forfeiture.

All citizens are expected to understand and obey the laws. Copies of the state statutes are available in most public libraries.

Laws are written in a very specific format. Through the years, the water laws have been reorganized and revised many times. Each individual provision is indicated by a number and/or a letter. Specific phrases or statements have particular legal importance.

The content of statutes varies from statements of need or purpose and delegation of authority to general prohibition or specific conditions or activities.

### ***Administrative Codes***

Administrative rules are adopted by agencies to govern the enforcement or administration of statutes. They have the same force as the laws they refer to.

As with laws, all staff and citizens are expected to understand and comply with administrative rules. Anyone may receive copies of the Administrative Register (updating mechanism); copies of the Wisconsin Administrative Code (which includes all individual rules) are available in most public libraries.

The format for administrative rules is specifically described in Section 227.024, Wisconsin Statutes. In particular, the format section calls for the use of "plain language which can be easily understood to the greatest extent possible." The Revisor of Statutes and the Legislative Council have published the "Administrative Rules Procedure Manual," to provide further detail for rule development.

Like laws, the content of administrative rules varies widely, from interpretations of statutes to descriptions of significant internal procedures.

### ***Manual Codes***

Manual codes are continuing instructions from the Secretary to employees on policy or procedures. They are not binding on the public. Procedures and other requirements which directly and significantly affect the public are required to be in the statutes or administrative code.

Manual codes are generally used by Department staff. The manual contains information needed by more than one bureau or district.

The format for manual codes is in Manual Code 1311. Especially important is the requirement that each manual code include a statement of purpose.

Manual codes contain a variety of information ranging from directions on implementing statutes, rules or other directives to the history, explanation and procedures for statutory programs and for special water resource situations.

## ***Handbooks***

Handbooks are instructions to program staff. As part of the directives (manual code) system, they carry the same weight as manual codes.

Handbooks are primarily used by program staff but may be needed by staff of other programs for purposes of coordination. Some parts of the information may be widely used - even copied for public use - by people involved with water management activities.

The format for handbook chapters is found at the front of the Water Management Handbook.

The handbook chapters contain explanations of basic program concepts which range from description of procedures to numerical guidelines to model ordinances.

## ***Public Information Materials***

Public information materials include brochures, fact sheets, booklets, audiovisual materials (slides, films, videotapes) and visual displays.

Public information materials, of course, are intended for the public. Any of the individual materials may be a person's first exposure to water management and regulations.

The format for public information materials may be anything that arouses people's curiosity or concern and holds their attention. The format should ensure that important information is easily recognized. Vocabulary and level of technical detail should be understandable to average high school students (remember that newspapers are aimed at an 8th grade-level audience).

The contents of public information materials varies widely. In general, explanation of a water regulatory program might include: statement of purpose/rationale (environmental, economic and historical information); individual activities affected; specific requirements to comply with statute or rules and contacts for further information. Different aspects may be emphasized to reach special segments of the public, such as local administrators, contractors, realtors or outdoor groups.

## ***Program Guidance Memoranda***

These are written policy guidance to assist staff in the interpretation and implementation of statutes, rules, or legal opinions and decisions. They generally are written in response to significant questions or to accompany new statutes or rules.

Program guidance memoranda are not authority for proceeding in a certain way. Instead, they help to explain other program materials which are the authority for our actions. These memoranda are a temporary means to let staff know how to operate until the next chance to incorporate their contents into more permanent form in handbooks, manual codes, or rules.

## ***Application Permit, Approval and Program Management Forms***

Application forms are used to collect information on proposed activities.

The forms are used by: (1) members of the public who want to do projects in or near waterways. For some of them, this may be their first exposure to water regulations and government procedures; (2) DNR staff who must

determine whether the proposal complies with the law; (3) other federal, state and local staff who must determine whether proposals comply with their regulations and (4) members of the public who want to determine what impact proposed projects may have on them.

Format generally states the information needed and provides space for response. The form of response desired (i.e., drawing with measurements, descriptions, quantity in particular units) should be explained.

The content of forms may vary with the information needed. In general, they request information about the person proposing the project; about the project purpose, location and specifications. The form itself should list contacts for further information and the addresses) to which the completed form should be delivered.

### ***Permit and Approval Forms***

Permit and approval forms should emphasize the conditions attached to the authority. The legal requirements for findings of fact and conclusions of law can be satisfied by referencing their availability in the issued authority. Both of these components would be retained and available at the issuing office. This approach will further emphasize the conditions.

### ***Program Management Forms***

Program management forms included in this document will be used to provide instructions to program staff about the generation of program guidance and the timely review and maintenance of all forms of programs materials.

Attachment 1

MATERIALS REVIEW SCHEDULE

*January*

Training Handbook  
1st half - odd years I  
2nd half - even years

*February*

*March*

Application forms  
all-yearly

*April*

*May*

Statutes  
all biennially

*June*

*July*

*August*

*September*

*October*

*November*

Administrative Rules  
half-even years  
half-odd years

*December*

Public Info.  
materials  
all yearly

Attachment 2

PROGRAM MATERIALS REVIEW LOG

DOCUMENT	MEMO TO TRAINING OFFICER (date)	MEMO TO DISTR. LIST (date)	REVIEW COORDINATOR	DEADLINE DATE	FINAL DOCUMENT REC'D (date)
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REQUEST FOR PROGRAM MATERIALS

DATE OF REQUEST \_\_\_\_\_

FORM OF MATERIALS DESIRED \_\_\_\_\_  
(See description of forms in Materials Management System)

SUBJECT OF DESIRED MATERIALS \_\_\_\_\_  
(e.g. Interpretation of statute; program terms or procedures; etc.)

SPECIFIC QUESTIONS TO BE RESOLVED/INFORMATION PRESENTED  
(Attach additional sheet if necessary)

Person Requesting Material

Name: \_\_\_\_\_

Address: \_\_\_\_\_

FOR BUREAU USE:

TRAINING OFFICER	ACTION BY BUREAU	ASSIGNED	DRAFT	COMPLETION
DATE RECEIVED	MANAGEMENT	DRAFTER	DUE DATE	DATE

Attachment 5

PROGRAM MATERIALS REQUEST LOG

FORM/SUBJECT	DATE REC'D	DRAFTER	DUE DATE
<hr/>			



**CORRESPONDENCE/MEMORANDUM**

**STATE OF WISCONSIN**

*Date:* March 7, 1983

*File Ref:* 3550

*To:* Bureau Staff

*From:* Ed Brick

*Subject:* Program Materials Management System (PMMS)

Attached is a copy of a flow chart outlining the procedural steps of the PMMS which Joe King discussed at the recent Water Regulation and Floodplain/Shoreland staff meetings. You will note that one chart deals with existing program materials, while the second chart describes procedures for new program guidance.

Also attached is the new form that field staff could use when requesting guidance, forms, etc., from the Bureau. Once the form has been received by the Program Development & Evaluation (PD&E) Section, I will discuss the request with the appropriate Section Chief (in some cases, I'll confer with both Larry and Scott).

Once a deadline for completion of the request has been established by the Section Chief (S.C.), it will be the responsibility of the drafter to keep the S.C. advised of the progress in meeting the deadline.

Finally, we are attaching a copy of the glossary letter that we will use when issuing new or existing program guidance to the field.

Please insert the flow charts, glossary letter and PMMS Request Form in Appendix 8 of the Water Regulation Handbook. Let me know if you have any further questions concerning this material.

EB:JK:maq

cc: Kathy Curtner ADM/5

Attachs.

[not included: two forms, two flow charts]

## **Appendix 9**

### **AUDIOVISUAL MATERIALS AVAILABLE FROM THE BUREAU OF WATER REGULATION AND ZONING**

#### **A. Films**

##### ***ECOLOGY OF THE POND***

7 1/2 Minutes

This short film has a very simple narrative and lots of spectacular animal action. It does not present any issues directly.

The film could be used as an introduction to a discussion of the importance of ponds, pond creation, activities that affect ponds, what our program does for/with ponds. Good for any audience.

##### ***THE CREEK***

26 Minutes

This semi-technical film explains the biological workings of a stream. Vocabulary includes: dissolved oxygen, siltation, Latin names of organisms. It describes how a citizen or school group can "save" a stream. Although it concentrates on pollution problems, it does explain the hydrology of a stream (e.g. watershed drainage system, role of a marsh).

This film would be the most useful for environmental groups. You could use it as a lead into discussion of how our programs protect waterways (consider erosion and siltation, drainage, etc.). Good for high school age and up.

##### ***THE LAST RIVER***

30 Minutes

Remember the little streams you played in as a child? Northwoods conservation sage, Sigurd Olson and a young boy reminisces during a trip down the Wolf River. In the process, they explain man's attraction to waterways and the need for saving them - from wild river preservation to shoreline and watershed protection; with a little northwoods philosophy thrown in.

This is an old film so the photography is not as beautiful as it once was. The film is appropriate for outdoor groups including sportsmen, conservationists, outing clubs and even tourism operators near wild areas. It instills a real pride in the water resources of Wisconsin. This could be used as a lead into brief discussion of tradition of wise use of water resources through water regulations. High school age and up would understand this presentation.

##### ***SHORELAND DEVELOPMENT: A NEW APPROACH***

About 20 Minutes - two copies

Produced by the Inland Lake Demonstration Project, this film gives an excellent overview into the development pressures working on Wisconsin's lakes. It explains the economic importance of development as well as the

headaches experienced by owners, developers and local people. Some of the pitfalls - grading, filling, boat licenses - are shown. Finally, the film traces the developer's planning process.

This film would be ideal as a topic for discussion itself (critique) or as a lead into some points on shoreland zoning, water regulations affecting lake development (how they promote sound practices, protect recreational opportunities, etc. Local officials, realtors, contractors, property owners associations are possible audiences.

### ***CRY OF THE MARSH***

About 10 Minutes

This film uses no narration, just music and striking photography to tell a tragic tale. From shots of a marsh, it moves to big dredges and bulldozers, stranded fingerlings, fleeing deer and frying (literally) chicks in a nest.

Obviously, this film is very strident in its wetlands protection message. Show it to audiences you really want to startle.

To Use the Films:

Films will be kept in the Central office by Elly Lawry. Call her one week in advance of when you will need the film. They will be sent by field mail.

Please return films within two weeks of when you get them. Let Elly know if you want to keep a film longer.

Lists of films available from the UW Bureau of Audio-Visual Instruction and films assigned to DNR districts and bureaus are attached. BAVI ordering instructions are included. Contact the individual offices to ask about borrowing films.

7/82

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